

04:06:54 1 A. Right. I was labeled as someone who was highly accessible
04:06:56 2 and available to listen to the concerns and the criticisms.

04:07:02 3 Q. So as superintendent and, as I previously said, as a
04:07:06 4 teacher, did you have lots of exposure to comments in the
04:07:08 5 community about Hearne schools?

04:07:11 6 A. Yes, I did.

04:07:11 7 Q. And a lot of those comments were from parents?

04:07:14 8 A. Parents, correct.

04:07:16 9 Q. When you became superintendent in 1996, were the transfers
04:07:27 10 still leaving Hearne?

04:07:27 11 A. Yes, they were.

04:07:27 12 Q. Did the numbers change at all when you became
04:07:27 13 superintendent?

04:07:27 14 A. They increased, as I recollect.

04:07:32 15 THE COURT: What improved?

04:07:34 16 THE WITNESS: The numbers that left the district.

04:07:37 17 Number of students that transferred out of the district, seemed
04:07:43 18 like they improved.

04:07:45 19 MR. CASPAR: They increased.

04:07:46 20 THE COURT: You mean they were enhanced? Is that what
04:07:48 21 you're saying?

04:07:50 22 THE WITNESS: I'm saying they left the district.

04:07:50 23 Q. (BY MR. CASPAR) But did the numbers go up?

04:07:53 24 A. Of?

04:07:53 25 Q. Of transfers?

04:07:53 1 A. Yes. Okay. Yes. I see what you're saying.

04:07:58 2 Q. Where were these transfers going?

04:08:03 3 A. They went to Mumford. That's where I saw most of the buses
04:08:07 4 were Mumford buses.

04:08:08 5 Q. So Mumford was running buses into Hearne at that time?

04:08:11 6 A. Yes.

04:08:12 7 Q. About how many was it running when you first became
04:08:14 8 superintendent?

04:08:17 9 A. As many as three, possibility of four, I think.

04:08:22 10 Q. Did Mumford do anything else to attract these transfer
04:08:25 11 students that you know of?

04:08:26 12 A. Yes. They sent out at least one communication that I saw
04:08:36 13 that I guess was sent to pass that said they wanted those kids
04:08:41 14 who had passed all of the tests, and if they had good attendance
04:08:45 15 and good behavior, then they would be interested in considering
04:08:50 16 them.

04:08:51 17 MR. FELDMAN: Your Honor. Objection. Best evidence
04:08:53 18 rule. We have documents that speak to this and that are contrary
04:08:56 19 to what the witness has testified.

04:08:58 20 THE COURT: I overrule the objection.

04:08:59 21 Q. (BY MR. CASPAR) Mr. McDaniel, at the time transfers first
04:09:03 22 started -- or at the time you first started as superintendent,
04:09:08 23 how big a school was Hearne?

04:09:16 24 A. It was a small school. I don't know that it had 75
04:09:19 25 students. I don't have the exact number, but it seemed like it

04:09:21 1 was a very small school.

04:09:22 2 Q. By the time you left superintendent in 2002, how big a
04:09:25 3 school was it?

04:09:26 4 A. It was large enough that they needed more buildings because
04:09:33 5 they built new buildings and things.

04:09:35 6 Q. When you first started as superintendent, how many grades
04:09:38 7 did Mumford have?

04:09:41 8 A. Mumford went through grade eight.

04:09:45 9 Q. K through 8?

04:09:46 10 A. K through 8, I think.

04:09:48 11 Q. Where did its high school students go?

04:09:51 12 A. To Hearne.

04:09:51 13 Q. To Hearne? When you finished as superintendent, how many
04:09:53 14 grades did Mumford have?

04:09:58 15 A. I think, sir, they had already gone through grade 12 unless
04:10:01 16 they were adding a grade each year. They added the high school.

04:10:04 17 Q. And they're certainly K through 12 now?

04:10:09 18 A. Yes.

04:10:09 19 Q. So the kids -- do any kids go to Hearne any more for high
04:10:11 20 school?

04:10:13 21 A. Not that I'm aware of.

04:10:20 22 Q. Sir, how would you describe the effects of the transfers on
04:10:24 23 Hearne I.S.D?

04:10:26 24 A. It did hurt Hearne, as I said previously, financially.

04:10:35 25 Q. In what way financially?

04:10:37 1 A. The number of students that left, there's when you multiply
04:10:41 2 that times that \$5500, then it really affected us. It caused us
04:10:49 3 -- we were -- put a financial bind on us. For one thing, we
04:10:55 4 tried to maintain smaller classes, and the reason we wanted to
04:10:58 5 hold on to the smaller classes is because we thought we could do
04:11:02 6 a better job academically with some of the more challenging
04:11:06 7 students that we were left with after the others were transferred
04:11:09 8 out.

04:11:10 9 Q. With the money leaving the district, were you able to retain
04:11:14 10 those smaller classes?

04:11:16 11 A. No.

04:11:17 12 Q. Did you have to let go of teachers?

04:11:20 13 A. We had to let go of teachers. That's right.

04:11:22 14 Q. You mentioned that some of the higher performing students
04:11:24 15 were leaving the district?

04:11:26 16 A. Yes, that's correct.

04:11:26 17 Q. How did that affect the school academically?

04:11:30 18 A. It was more challenging for us to prepare those who were --
04:11:36 19 left there with us to meet all of the requirements of the state.

04:11:42 20 Q. The state assessment tests?

04:11:44 21 A. Yes.

04:11:46 22 Q. Did the Hearne scores on those tests suffer as a result of
04:11:49 23 the transfers?

04:11:50 24 A. Yes. That's correct.

04:11:52 25 Q. And this was due, do you think, to the higher performing

04:11:57 1 kids leaving the district?

04:11:58 2 A. Yes.

04:11:59 3 MR. FELDMAN: Leading, your Honor. Objection, leading.

04:12:02 4 THE COURT: I overrule the objection.

04:12:03 5 Q. (BY MR. CASPAR) And where were these kids going?

04:12:05 6 A. They went to Mumford for large part.

04:12:15 7 Q. How else were the transfers affecting Hearne? You mentioned
04:12:18 8 the financial impact.

04:12:19 9 A. Socially.

04:12:21 10 Q. What do you mean by socially?

04:12:23 11 A. I mean that the kids who were left there don't have the
04:12:29 12 opportunity to interact with white students as they had
04:12:34 13 previously. So they don't really know how to get along with
04:12:39 14 people, as they should, and learn to work with people, as they
04:12:43 15 should, and as they could have if we still had our population as
04:12:53 16 it was.

04:12:53 17 Q. Would you say it's the same for the white students leaving
04:12:53 18 the district?

04:12:53 19 A. Yes.

04:12:53 20 Q. So would you say that the transfers that affected the racial
04:12:55 21 character of the district?

04:12:57 22 A. Very much so.

04:12:57 23 MR. FELDMAN: Objection, your Honor. Leading.

04:12:59 24 THE COURT: Overrule the objection.

04:13:00 25 Q. (BY MR. CASPAR) In what way?

04:13:02 1 A. Because we're just -- we're homogeneous and we're just
04:13:07 2 locked into just who's there. No interaction with the other kids
04:13:14 3 that would benefit from having -- I'll tell you another thing
04:13:17 4 that I noticed. Athletics.

04:13:21 5 MR. FELDMAN: Objection, your Honor. Nonresponsive.

04:13:22 6 THE COURT: Don't volunteer testimony. Wait until a
04:13:28 7 question comes.

04:13:30 8 A. All right. Thank you.

04:13:31 9 Q. (BY MR. CASPAR) How did it affect athletics?

04:13:34 10 A. Because the schools that we play, they have the advantage of
04:13:37 11 all of the ethnic groups they're helping. So in Hearne, we just
04:13:42 12 have a homogeneous group. We get the best of just -- we just
04:13:45 13 have mainly the African-Americans, so we don't have the benefit
04:13:49 14 of the big white kids to play in the line and the big white kids
04:13:56 15 to participate in the field events. So we're in a disadvantage
04:14:00 16 with athletics. I think of these things as I talk.

04:14:04 17 Q. Sure. Would you say that the students participating in the
04:14:06 18 athletics are also at a disadvantage because they're not --

04:14:10 19 A. I sure do.

04:14:12 20 Q. -- participating with kids of other races?

04:14:13 21 A. Yes.

04:14:16 22 Q. Well, so based on your lifetime of experience in Hearne, Mr.
04:14:19 23 McDaniel, can you tell me what the perception of Hearne I.S.D. is
04:14:24 24 in the community racially?

04:14:27 25 A. What I hear --

04:14:28 1 MR. FELDMAN: Objection, your Honor.

04:14:30 2 A. -- is that we are --

04:14:31 3 MR. FELDMAN: Objection, your Honor. Calls for
04:14:32 4 conclusion.

04:14:33 5 THE COURT: Overrule the objection.

04:14:35 6 A. Question again.

04:14:36 7 Q. (BY MR. CASPAR) Well, based on your lifetime experience in
04:14:39 8 the Hearne community, can you comment on what you think that the
04:14:41 9 perception of the Hearne District is in the Hearne community?

04:14:46 10 A. That we are basically a black school. We have some good
04:14:53 11 kids, but they are just basically a black school district.

04:14:59 12 Q. And do you remember what person made you realize that
04:15:03 13 perception existed in the community?

04:15:05 14 A. Yes. You asked earlier if I interacted with parents and
04:15:08 15 talked to parents.

04:15:09 16 Q. Right.

04:15:12 17 A. I noticed a young lady in the superintendent's office one
04:15:15 18 day, so I saw her there, and knowing most of the people that live
04:15:19 19 there and I know she was a different person. So I started
04:15:24 20 visiting with her a little bit, and she told me that she had --

04:15:28 21 MR. FELDMAN: Objection, your Honor. Hearsay.

04:15:30 22 Q. (BY MR. CASPAR) I don't believe he testified to a statement
04:15:33 23 that she made.

04:15:33 24 MR. FELDMAN: He's about to say what she told him.

04:15:36 25 MR. CASPAR: You're anticipating what he's about to

04:15:37 1 say.

04:15:38 2 THE COURT: Counsel, this is a hearing before the Court
04:15:40 3 without a jury. I do not intend to credit -- or, rather, use in
04:15:46 4 my conclusions any testimony that I regard as inadmissible. I
04:15:50 5 overrule your objection. Now, let's go on.

04:15:54 6 Q. (BY MR. CASPAR) So what do you think about with this new
04:15:57 7 woman that you know?

04:15:58 8 A. I'm always curious as to -- I was always curious as to what
04:16:01 9 people thought about our district and the perception that people
04:16:05 10 had, wanting to have an excellent school district. So I noticed
04:16:11 11 that she had moved in from Bryan. So I talked to her a little
04:16:14 12 bit and she -- during the course of the conversation, I said,
04:16:20 13 well, tell me about how things are going for you, your children.
04:16:23 14 She says they're doing very well. I asked her if -- things like
04:16:27 15 if you're pleased with the district. And she said yes and, of
04:16:29 16 course, said, so you moved here. That's good. You moved to
04:16:34 17 Hearne. That's really good. And I asked her where she lived and
04:16:36 18 she told me. And then, I said, well, all that's good.

04:16:40 19 So did you check with others before you moved here?
04:16:47 20 She said oh, yes, I did. I said, so you heard good things? She
04:16:51 21 said, oh, no, I didn't. I said, so what kind of things did you
04:16:55 22 hear? She said a lot of bad things. So I said, well, such as?
04:17:01 23 Be specific. She said, I just heard there were a lot of black
04:17:04 24 people in Hearne.

04:17:05 25 Q. So that's how you knew there was this perception in the

04:17:08 1 community of Hearne?

04:17:09 2 A. I had heard it a lot, but then, I was curious as to what the
04:17:12 3 ones coming in would have to say and this is what she told me.

04:17:24 4 Q. And as superintendent, what did you do about the problems of
04:17:24 5 transfers leaving the district?

04:17:24 6 A. I talked to people at the Texas Education Agency.

04:17:26 7 Q. What did you talk with them about?

04:17:30 8 THE COURT: When was this?

04:17:30 9 Q. (BY MR. CASPAR) When did you first talk to people at TEA?

04:17:34 10 A. I talked to people at TEA shortly after I got the
04:17:37 11 superintendent's job.

04:17:38 12 Q. When was that?

1:17:38 13 A. 1996.

04:17:40 14 Q. On that occasion what did you talk about?

04:17:43 15 A. What we could do to stop kids from leaving the district and
04:17:49 16 Mumford picking up our students at the district.

04:17:52 17 Q. What did they tell you?

04:17:53 18 A. They told me things like it was not right because what they
04:17:57 19 were doing was reducing the racial number, that they shouldn't do
04:18:02 20 that. However, they said it was legal for them to come into the
04:18:05 21 district, but it was not legal that they were in violation of the
04:18:10 22 court order.

04:18:12 23 Q. What were you going to say?

04:18:14 24 A. I was saying so I was told that it was wrong for them to do
04:18:18 25 what they were doing.

04:18:19 1 Q. When you first called TEA, do you remember who you spoke
04:18:22 2 with?

04:18:24 3 A. That I don't remember, sir.

04:18:25 4 Q. Did you ever speak with a person called Dr. Villarreal?

04:18:29 5 A. Yes, that's when I talked to Dr. Villarreal.

04:18:33 6 Q. What did you call Dr. Villarreal about?

04:18:36 7 A. About transfers.

04:18:37 8 Q. And when was this?

04:18:37 9 A. This was possibly 1998, after I talked and talked, so I
04:18:44 10 thought maybe I need to get something in writing. So I talked to
04:18:47 11 Dr. Villarreal.

04:18:48 12 Q. And why, specifically, were you calling Dr. Villarreal?

04:18:51 13 A. Because I had heard that some districts didn't report
04:18:56 14 transfers. So I called to ask him if it was necessary for us to
04:19:03 15 turn in a transfer report.

04:19:04 16 Q. Because you were turning in transfer reports?

04:19:07 17 A. Yes, we'd always turned in and --

04:19:09 18 Q. Did you assume that you were required to turn in these
04:19:13 19 forms?

04:19:13 20 A. Yes. Yes, I did.

04:19:15 21 Q. But were you calling to find out if that was the case?

04:19:18 22 A. Right. If it was just something we were doing
04:19:22 23 unnecessarily.

04:19:22 24 Q. What did he say?

04:19:23 25 A. He said, oh, no, you must turn it in. All districts turn in

04:19:26 1 the transfer reports.

04:19:28 2 Q. What did you say to that?

04:19:32 3 A. I paused for a bit. And he said, name one. I can tell you
04:19:37 4 that they do. So I asked him. He said, any of them you have a
04:19:42 5 question about.

04:19:42 6 Q. Did you name one?

04:19:44 7 A. I said Mumford.

04:19:45 8 Q. What did he say?

04:19:46 9 A. No.

04:19:47 10 Q. This is 1998?

04:19:48 11 A. 1998. He said no. I don't have one.

04:19:51 12 Q. Did you ever write to TEA at this time?

04:19:55 13 A. Yes, I did. It was somewhere during this time that I was
04:19:59 14 told just to put this in -- put my concerns in writing.

04:20:04 15 Q. Your Honor, I'd like to show the witness an exhibit. May I
04:20:07 16 approach the witness?

04:20:08 17 THE COURT: You may.

04:20:13 18 Q. (BY MR. CASPAR) Mr. McDaniel, I'm handing you what's been
04:20:16 19 marked as Exhibit 10. Could you take a moment to review that,
04:20:21 20 please?

04:20:22 21 A. Yes, sir.

04:20:26 22 Q. Your Honor, would you like a copy of the exhibit?

04:20:29 23 THE COURT: Yes.

04:20:37 24 MS. JUREN: Your Honor, there is -- TEA did supply a
04:20:39 25 whole set of hard copy to the Court that I believe are up there.

04:20:43 1 THE COURT: All right. Thank you.

04:20:44 2 MR. CASPAR: This is Exhibit 10, but it doesn't have a
04:20:47 3 sticker on it.

04:20:48 4 THE CLERK: Okay. Thank you.

04:20:58 5 Q. (BY MR. CASPAR) Have you had a chance to review that yet?

04:21:00 6 A. Yes, I have.

04:21:01 7 Q. Do you recognize that document?

04:21:02 8 A. Yes, sir. I do, sir.

04:21:04 9 Q. Can you tell me what it is?

04:21:05 10 A. This letter's in regards to telephone conversations
04:21:10 11 concerning the transfer of students who live in Hearne but attend
04:21:14 12 school in Mumford and Gause School Districts. We have compiled
1:21:18 13 the list with the pertinent information you requested to the best
04:21:21 14 of our knowledge. However, we feel this list does not reflect
04:21:24 15 all the students attending Gause and Mumford who live in Hearne.
04:21:30 16 If further assistance is needed, please call.

04:21:32 17 Q. So you wrote this letter following your conversation with
04:21:35 18 Dr. Villarreal?

04:21:36 19 A. Yes. Conversations.

04:21:38 20 Q. Did you ever write to TEA again?

04:21:41 21 A. Yes, I did, sir.

04:21:43 22 Q. How often?

04:21:50 23 A. Let's say, sir, I know once or twice more I did.

04:21:56 24 Q. What were you writing about?

04:21:58 25 A. About the transfers and the codes that I learned that they

04:22:04 1 were using codes.

04:22:07 2 Q. When was this -- when did this issue about Mumford's using
04:22:11 3 codes come up?

04:22:13 4 A. Because the students were continuing to transfer. And we
04:22:19 5 checked, we were told that they were using, like, a safety issue,
04:22:23 6 a safety code.

04:22:24 7 Q. Around when did this happen?

04:22:28 8 A. Probably the next year, after this.

04:22:29 9 THE COURT: I don't understand what you mean by codes.

04:22:40 10 A. Am I stating that correctly, sir? The codes -- maybe
04:22:42 11 there's another name for that. But what they were --

04:22:47 12 Q. (BY MR. CASPAR) Mr. McDaniel, by code do you mean the
1:22:48 13 hardship codes that the transfers were using?

04:22:50 14 A. Yes, hardship codes.

04:22:53 15 Q. Your Honor, I offer Exhibit 10 into evidence.

04:22:56 16 THE COURT: It is admitted.

04:22:59 17 Q. (BY MR. CASPAR) So what year was this that you learned about
04:23:03 18 that there was an issue with Mumford's use of hardship codes?

04:23:06 19 A. I think shortly after this letter. I'm not remembering the
04:23:10 20 year, but it was possible the next year.

04:23:12 21 Q. Did you write TEA about it?

04:23:14 22 A. Yes, we did.

04:23:16 23 Q. Your Honor, may I approach the witness?

04:23:18 24 THE COURT: You may.

04:23:19 25 Q. (BY MR. CASPAR) Mr. McDaniel, I'm handing you a copy of

1 what's been marked Exhibit 43.

2 MR. FELDMAN: Judge, just as a logistical matter, the
3 parties have submitted, roughly, 200 some-odd exhibits, and we
4 have gone through a lot of effort to see if we could stipulate to
5 these exhibits. And I think many of them are stipulated to. It
6 would seem to me that we could really move this case along. For
7 example, these letters from Mr. McDaniel have all been stipulated
8 to. And it seems to me if the parties could submit their
9 exhibits to the Court that there's no objection to, we could move
10 a lot faster.

11 THE COURT: Well, a lot faster in what respect?

12 MR. FELDMAN: It would take less time because there
13 won't be -- necessarily be a prove-up on each exhibit.

14 THE COURT: All right. The Court will receive in
15 evidence all exhibits that have been stipulated to by the
16 parties.

17 MR. CASPAR: Your Honor, the United States has not
18 stipulated to any exhibits. We filed yesterday an objection to
19 many of the exhibits. We don't object to most of them.

20 THE COURT: Well, the Court received in evidence all
21 exhibits that have not been objected to.

22 MR. CASPAR: There are several hundred exhibits that I
23 don't think any party plans on offering. We're worried it might
24 clutter up the record.

25 THE COURT: Well, let it be cluttered up.

04:25:08 1 MR. CASPAR: Yes, sir.

04:25:09 2 THE COURT: This is an open -- I'm listening to
04:25:14 3 everything. Considering everything. Let's see. It's a quarter
04:25:20 4 of 12:00. My schedule is from 9:00 to 11:45. We begin, again,
04:25:29 5 at 1:15. We'll go to 5:00. There probably will be one or two
04:25:35 6 recesses in the afternoon. The Court is in recess until 1:15.

05:46:10 7 (Lunch recess.)

05:57:10 8 THE COURT: The witness may resume the stand. You may
05:57:28 9 continue with your direct examination.

05:57:34 10 Q. (BY MR. CASPAR) Mr. McDaniel, what is Exhibit 43?

05:57:46 11 A. Exhibit 43 is a letter addressed to Dr. Rowell.

05:57:53 12 Q. Did you write this letter?

05:57:55 13 A. Yes, I did, sir.

05:57:56 14 Q. What did you write it about?

05:57:59 15 A. We told him that we were interested in knowing what
05:58:02 16 exemption hardship codes Mumford, Gause and Milano were using to
05:58:08 17 accept students that were transferred from Hearne. We think
05:58:12 18 they're using a safety and medical reason code for leaving the
05:58:17 19 district.

05:58:17 20 Q. What's the date on the letter?

05:58:18 21 A. The date is April 18, 2002.

05:58:22 22 Q. I notice, also, in the last paragraph, it mentions that a
05:58:26 23 new superintendent had arrived at Hearne; is that right?

05:58:28 24 A. That's correct, sir.

05:58:29 25 Q. Did you retire around this time?

05:58:32 1 A. Right. I did, at the -- in May of 19 -- 2002, sir.

05:58:39 2 Q. Why did you retire then?

05:58:41 3 A. One reason that I retired is it appeared that most of the
05:58:51 4 attention was directed toward me or -- and the students were not
05:58:58 5 getting the attention that I felt that they needed.

05:59:02 6 Q. When you say most of the attention was directed towards you,
05:59:05 7 what attention are you talking --

05:59:08 8 MR. FELDMAN: Objection. Relevance.

05:59:09 9 THE COURT: Your objection is overruled.

05:59:14 10 A. I mean, that the -- instead of me being allowed to focus on
05:59:22 11 helping the children to get an education, I was having to spend
05:59:25 12 time trying to fight the complaint -- I mean, the transfer issue
05:59:35 13 and other problems that were there that were keeping me from
05:59:39 14 doing what I needed to do as a superintendent.

05:59:41 15 Q. So how did you finally just decide to step down?

05:59:45 16 A. I decided that perhaps since I was not able to get the --
05:59:52 17 one of the reasons I was not able to get their attention, other
05:59:56 18 authorities who could do something about the transfer problem, it
05:59:59 19 did not appear that I was able to get the attention. One person
06:00:06 20 told me that, well, perhaps --

06:00:08 21 MR. FELDMAN: Objection, your Honor. Hearsay.

06:00:09 22 A. If you just retire --

06:00:10 23 THE COURT: Objection's overruled.

06:00:12 24 A. If you retire, perhaps they can get a white superintendent,
06:00:16 25 and maybe he'll be able to get the attention of the authorities

06:00:19 1 to get something done about a transfer, since you aren't able to
06:00:23 2 get it done.

06:00:24 3 Q. (BY MR. CASPAR) Did you believe that at the time?

06:00:25 4 A. Yes, I did.

06:00:28 5 Q. So did you step down in the best interest of the Hearne
06:00:31 6 School District?

06:00:31 7 A. Yes, I did, sir.

06:00:34 8 Q. Well, thank you very much. I have no further questions for
06:00:37 9 you.

06:00:38 10 THE COURT: How old are you, sir?

06:00:39 11 THE WITNESS: I'm 62.

06:00:45 12 THE COURT: All right.

06:00:48 13 MR. HEPWORTH: Hearne has no questions for this
06:00:51 14 witness. Thank you.

06:00:56 15 MR. FELDMAN: Your Honor, the Court will permit me to
06:01:05 16 put a demonstrative.

06:01:06 17 THE COURT: Yes, sir. You may.

06:01:43 18 MR. FELDMAN: May it please the Court.

06:01:46 19 THE COURT: Please proceed.

06:01:46 20 CROSS-EXAMINATION

06:01:48 21 BY MR. FELDMAN:

06:01:48 22 Q. Mr. McDaniel, my name is David Feldman. I represent the
06:01:53 23 Mumford School District. We've never met before, have we?

06:01:56 24 A. I don't recollect that we have.

06:01:59 25 Q. I'd like to talk to you a little bit more about your career.

06:02:05 1 A. Yes, sir.

06:02:07 2 Q. With Hearne I.S.D. you were the principal at Blackshear for
06:02:16 3 20 years; is that correct?

06:02:17 4 A. That's correct.

06:02:19 5 Q. As I understand your testimony?

06:02:19 6 A. Yes.

06:02:19 7 Q. From 1976 through 1996?

06:02:22 8 A. Yes, sir.

06:02:23 9 Q. At which time, you then became the superintendent of the
06:02:26 10 school district?

06:02:26 11 A. Yes, sir.

06:02:27 12 Q. And held that position till the completion of the 2001-2002
06:02:32 13 school year?

06:02:33 14 A. Yes, sir.

06:02:33 15 Q. So you were the superintendent for five years?

06:02:35 16 A. Six years.

06:02:38 17 Q. Six years. From '96-'97 to 2001-2002? Where am I missing a
06:02:45 18 year?

06:02:47 19 A. I guess I gave the right number. I served six years.

06:02:53 20 Q. Did you become superintendent prior to '96?

06:02:56 21 A. No.

06:02:56 22 Q. Okay. But you did retire at the end of '02?

06:02:58 23 A. That's correct.

06:02:59 24 Q. All right, sir. Now, your testimony on direct this morning,
06:03:09 25 you were talking a lot about --

06:03:12 1 THE COURT: Excuse me. Maybe my arithmetic is wrong.
06:03:14 2 I thought that is six years.
06:03:19 3 MR. HEPWORTH: Mine, too.
06:03:20 4 MR. FELDMAN: Well, then, I -- yes, your Honor. You're
06:03:22 5 correct.
06:03:23 6 THE COURT: All right. Let's proceed.
06:03:24 7 MR. FELDMAN: I usually pride myself on my math, but it
06:03:36 8 failed me that time.
06:03:36 9 THE COURT: I'm not good at it.
06:03:36 10 MR. FELDMAN: Maybe I'll improve.
06:03:36 11 Q. (BY MR. FELDMAN) And it is Mr. McDaniel. It's not Dr.
06:03:36 12 McDaniel?
06:03:36 13 A. You're correct. No.
06:03:37 14 Q. I just wanted to make sure I was referring to you
06:03:39 15 appropriately.
06:03:41 16 You testified, quite a bit, this morning about
06:03:47 17 different types of experiments that you undertook with respect to
06:03:54 18 the grouping of students. Do you recall that, sir? And maybe
06:04:00 19 experiment's the wrong word. But different methods that you
06:04:04 20 utilized with respect to the grouping of students when you were
06:04:09 21 principal at Blackshear.
06:04:10 22 A. Probably three, I think I talked about.
06:04:13 23 Q. Three different efforts, and those were the ability
06:04:17 24 grouping, the homogeneous grouping, and the modified homogeneous
06:04:21 25 grouping?

06:04:22 1 A. Homogeneous, heterogeneous and modified heterogeneous
06:04:26 2 grouping.

06:04:26 3 Q. What was the ability grouping?

06:04:28 4 A. Homogeneous grouping.

06:04:30 5 Q. Ability grouping is homogeneous grouping?

06:04:33 6 A. That's what I refer to it as.

06:04:35 7 Q. Okay. And what exactly does that mean?

06:04:38 8 A. Homogeneous, you have one population, mostly one population
06:04:44 9 together.

06:04:45 10 Q. Okay. And when you were testifying about the reactions that
06:04:52 11 you got from parents --

06:04:54 12 A. Yes.

06:04:55 13 Q. -- regarding those different efforts to engage in different
06:04:59 14 types of grouping, you were talking about comments specifically
06:05:03 15 at Blackshear, weren't you? You were talking about comments from
06:05:09 16 parents at Blackshear?

06:05:11 17 A. And comments from parents at East Side, also.

06:05:14 18 Q. But you weren't the principal at East Side, were you?

06:05:17 19 A. No. But I listened to comments from parents from East Side
06:05:21 20 at a school board meeting.

06:05:23 21 Q. Okay.

06:05:23 22 A. On that regards.

06:05:24 23 Q. But were you present at East Side when they were
06:05:29 24 experimenting with different types of groupings?

06:05:33 25 A. No. I had one of my sons was there.

06:05:37 1 Q. So you had knowledge as a parent as to what was happening at
06:05:41 2 East Side?

06:05:42 3 A. No. From the administrator who talked to me about what he
06:05:45 4 was doing.

06:05:47 5 Q. But in any event -- East Side is today pre-K through two?

06:05:54 6 A. It was the last time -- last that I checked.

06:05:57 7 Q. All right. And when you were principal at Blackshear from
06:06:00 8 '76 to '96, Blackshear was three through six?

06:06:04 9 A. At one point, we had second grade over there. We had second
06:06:07 10 grade for maybe a couple of years. But it was base -- most of it
06:06:15 11 was three through six.

06:06:17 12 Q. I was very confused in terms of how your history prior to
06:06:20 13 '76 came out. '75, you were at Sam Houston State. Were you at
06:06:28 14 the high school for any period of time, Hearne High School?

06:06:32 15 A. Yes, I was.

06:06:32 16 Q. When was that?

06:06:33 17 A. '68 through -- until '72.

06:06:37 18 Q. As a teacher?

06:06:38 19 A. Teacher, coach and assistant --

06:06:41 20 Q. But you weren't an administrator?

06:06:43 21 A. Well, assistant to the principal, I was told that was my
06:06:46 22 title.

06:06:46 23 Q. Assistant to the principal?

06:06:47 24 A. To the principal, yes.

06:06:49 25 Q. And what years were those -- what years did you serve as

06:06:54 1 assistant to the principal of Hearne High School?

06:06:58 2 A. Shortly after integration. Oh, my goodness, sir, I'm not
06:07:04 3 remembering the exact year, but it was after 1968 and before
06:07:10 4 1972. Somewhere there -- sir, a couple of years. It was over a
06:07:14 5 four-year period, so a couple of years.

06:07:16 6 Q. Were you ever at the junior high?

06:07:18 7 A. Yes.

06:07:18 8 Q. When were you at the junior high?

06:07:20 9 A. I was at the junior high from -- let's see. Must have been
06:07:26 10 '73, '74.

06:07:30 11 Q. And what was your position at the junior high?

06:07:33 12 A. Junior high principal.

06:07:34 13 Q. Okay. That's what I thought.

06:07:38 14 Now, you were -- not to ask you to be modest or
06:07:45 15 immodest, but your reputation as a principal at Blackshear, in
06:07:51 16 particular, was an excellent reputation, was it not?

06:07:54 17 A. In my opinion, yes. And according to my evaluations by the
06:07:57 18 superintendent, I was excellent.

06:07:59 19 Q. And that's one of the reasons why you were nominated to be
06:08:03 20 superintendent of school district, because you did have an
06:08:06 21 outstanding reputation as a principal over there?

06:08:09 22 A. According to my evaluations, I would say that's a true
06:08:12 23 statement.

06:08:12 24 Q. Now, at the time that you were principal of Blackshear, who
06:08:16 25 was the superintendent of Hearne I.S.D?

06:08:21 1 A. Henry Bonorden. And later -- well, he was Dr. Henry
06:08:27 2 Bonorden.
06:08:27 3 Q. Can you tell the Court the years that Dr. Bonorden --
06:08:31 4 B-O-N-O-R-D-E-N; is that correct?
06:08:34 5 A. Correct.
06:08:34 6 Q. The years that Dr. Bonorden was the superintendent of Hearne
06:08:46 7 I.S.D.
06:08:46 8 A. I think I can. He was superintendent, I think, sir, he
06:08:46 9 started at 1973.
06:08:49 10 Q. So did he start post-integration?
06:08:56 11 A. Post-integration.
06:08:57 12 Q. Being after the --
06:08:59 13 A. Yes. '68, yes. '72, '73, yes, he was post, uh-huh.
06:09:07 14 Q. And Dr. Bonorden was the superintendent from the early '70s
06:09:12 15 through 1996?
06:09:15 16 A. Correct.
06:09:15 17 Q. Or the -- end of the '95-'96 school year?
06:09:19 18 A. That's correct, uh-huh.
06:09:20 19 Q. And was he a good superintendent?
06:09:21 20 A. Excellent, in my opinion.
06:09:23 21 Q. And what was his race?
06:09:24 22 A. He was -- well, he looked like a white man.
06:09:28 23 Q. All right.
06:09:30 24 THE COURT: What did you say?
06:09:31 25 THE WITNESS: He was a white man. He looked like a

06:09:33 1 white man.

06:09:35 2 Q. (BY MR. FELDMAN) He had an excellent reputation?

06:09:36 3 A. With me.

06:09:37 4 Q. Well, that's all you can really speak to?

06:09:40 5 A. That's right. That's all.

06:09:42 6 Q. Now, so Dr. Bonorden named you as the principal of

06:09:48 7 Blackshear. He was the superintendent at the time that you were

06:09:52 8 named principal of Blackshear; isn't that correct?

06:09:59 9 A. Principal at Blackshear. I'm thinking back because there

06:10:01 10 was a time there was a Mr. Grant. Mr. Grant was there when I was

06:10:04 11 named -- yes. Dr. Bonorden. That's correct, yes.

06:10:09 12 Q. And the fact is Dr. Bonorden had been able to put a very

06:10:15 13 strong leadership team together at Hearne I.S.D.; isn't that the

06:10:20 14 case? Strong leadership team.

06:10:26 15 A. I know the administrators and I just know about my -- I

06:10:31 16 don't know if they -- if you'd call them -- depending what you're

06:10:36 17 calling strong. They were good friends of mine.

06:10:41 18 Q. And they were good principals; isn't that the case? That

06:10:45 19 the high school there was Leon Jackson?

06:10:48 20 A. Yes, Leon was the principal there at the time.

06:10:50 21 Q. And when did Mr. Jackson retire?

06:10:55 22 A. Mr. Jackson retired, sir, in four or five years before I

06:11:06 23 did. I don't remember the year.

06:11:08 24 Q. Early '90s?

06:11:10 25 A. I think you're correct. Yes, sir, I think so.

06:11:12 1 Q. And he had the reputation of being a very strong leader at
06:11:15 2 the high school?

06:11:16 3 A. Very strong disciplinarian.

06:11:18 4 Q. Very strong disciplinarian.

06:11:20 5 THE COURT: Does that include corporal punishment?

06:11:24 6 THE WITNESS: He didn't do much corporal punishment but
06:11:26 7 he just -- he monitored closely, and they had to do it, Mr.
06:11:30 8 Jackson, his way, and if not, then whatever the guidelines
06:11:34 9 allowed, this is what he used.

06:11:36 10 Q. (BY MR. FELDMAN) That was true regardless of a student's
06:11:38 11 race; is it not?

06:11:39 12 A. That's what I heard, yes, sir.

06:11:41 13 THE COURT: Regardless of the student's rights?

06:11:43 14 MR. FELDMAN: Race. Color, national origin.

06:11:47 15 THE COURT: Okay.

06:11:49 16 Q. (BY MR. FELDMAN) And at the junior high school -- by the
06:11:54 17 way, who replaced Mr. Jackson in the early '90s?

06:12:00 18 A. I think Jim Edge.

06:12:04 19 Q. Is he still the principal?

06:12:05 20 A. No, sir.

06:12:06 21 Q. Okay. When did he leave?

06:12:10 22 A. Two years afterwards, after he was hired, I think, somewhere
06:12:12 23 there about.

06:12:13 24 Q. It wasn't a particularly successful tenure, was it?

06:12:17 25 A. No, sir.

06:12:17 1 Q. And the discipline in the high school, when Mr. Edge came in
06:12:22 2 after Mr. Jackson started, it was affected. It started going
06:12:28 3 downhill; isn't that the case?

06:12:30 4 A. I don't know if that's what happened.

06:12:31 5 Q. Let me withdraw the word "downhill." That's, obviously, not
06:12:36 6 appropriate.

06:12:37 7 A. He had a different operating style than Mr. Jackson.

06:12:41 8 Q. He didn't have that strong leadership, strong disciplinarian
06:12:46 9 style, did he?

06:12:49 10 A. From what I knew, he just seemed to be -- he operated
06:12:52 11 different than Mr. Jackson.

06:12:54 12 Q. Didn't discipline at the high school suffer under Mr. Edge?

06:13:00 13 A. I don't remember that it did that much. I had a son in high
06:13:03 14 school at the time and I --

06:13:06 15 Q. Well, when you became superintendent in '96, what did you
06:13:08 16 think of the state of discipline at Hearne High School at the
06:13:16 17 time?

06:13:17 18 A. Well, that was a different principal, of course, you know.

06:13:19 19 Q. Well, I asked --

06:13:24 20 A. But then, discipline was a concern. Yes, sir.

06:13:27 21 Q. Discipline was a concern in 1996, when you became
06:13:30 22 superintendent. Discipline was not a concern at the high school
06:13:34 23 up through the early '90s, when Mr. Jackson was principal?

06:13:39 24 A. There was some concerns.

06:13:40 25 Q. But he was -- he was operating the high school with this

06:13:47 1 particular view towards maintaining the discipline?

06:13:51 2 A. Yes, sir.

06:13:51 3 Q. Of the school?

06:13:53 4 A. I respected him very highly.

06:13:54 5 Q. And how long was Mr. Jackson the principal of Hearne High

06:14:05 6 School?

06:14:05 7 A. Sir, I think he started in 197 -- I think it was 1974, '75,

06:14:11 8 I think.

06:14:11 9 Q. So close to --

06:14:13 10 A. '75, '76.

06:14:20 11 Q. -- seven years?

06:14:21 12 A. Yes.

06:14:21 13 Q. And during that time, his reputation for being a

06:14:24 14 disciplinarian was consistent?

06:14:26 15 A. Oh, yes.

06:14:26 16 Q. Now, over at the junior high, as I understand it, under Dr.

06:14:31 17 Bonorden, there was a principal by the name of Max Greenwelge?

06:14:37 18 A. Greenwelge, yes, sir.

06:14:38 19 Q. All right. And you may have to spell that for the court

06:14:40 20 reporter.

06:14:40 21 A. G-R-E-E-N-W-E-L-G-E.

06:14:46 22 Q. And how long was Mr. Greenwelge the principal of the junior

06:14:49 23 high?

06:14:53 24 A. Let's see. He stayed longer than Leon did. I'm not

06:14:57 25 remembering the year, but it was early '90s, I would think, sir.

06:15:07 1 Q. He was principal for about 20 years, also?

06:15:10 2 A. Yes. Yes, sir.

06:15:14 3 Q. And what was Mr. Greenwelge's reputation as a principal?

06:15:19 4 A. As a principal, I think he was -- the teachers liked him. I
06:15:26 5 think the teachers liked him, but at first, it was a pretty loose
06:15:31 6 ship and I don't know that it improved that much. He had a
06:15:37 7 different style than Mr. Jackson.

06:15:40 8 Q. Well, let me ask you this. You say he retired in the early
06:15:45 9 '90s?

06:15:46 10 A. Yes, sir.

06:15:46 11 Q. At the time that you took over as the superintendent in '96,
06:15:52 12 was discipline a concern at the junior high?

06:15:55 13 A. Yes, sir.

06:15:57 14 Q. Had discipline been a concern at the junior high for a long
06:16:00 15 time?

06:16:00 16 A. Yes, sir. Even during the tenure that -- that you just
06:16:05 17 mentioned, it was a major concern.

06:16:08 18 Q. What about discipline at Blackshear while you were
06:16:10 19 principal? Was that a concern?

06:16:12 20 A. Yes, sir.

06:16:13 21 Q. Over that period of 20 years?

06:16:15 22 A. Yes, sir.

06:16:16 23 Q. And at East Side, was discipline a concern at East Side, as
06:16:23 24 well?

06:16:26 25 A. Yes, sir.

06:16:28 1 Q. Who was the principal at East Side while you were the
06:16:30 2 principal of Blackshear?

06:16:33 3 A. Eugene Ballen and Jack Bradley.

06:16:36 4 Q. And what was their reputation as principals?

06:16:41 5 A. Eugene had a dual assignment, so he spent very little time
06:16:44 6 on his campus. Teachers pretty well just had to take care of
06:16:50 7 everything and his secretary, and because he was in charge of the
06:16:54 8 cafeteria and stuff like that. And Jack Bradley was working on
06:17:00 9 his Ph.D., so he spent a lot of time on the computer and with the
06:17:07 10 scouts.

06:17:08 11 Q. So, in other words, discipline was a concern at East Side,
06:17:11 12 as well?

06:17:14 13 A. Yes, sir.

06:17:16 14 THE COURT: I'm not sure I understand the concept of
06:17:19 15 discipline being a problem.

06:17:22 16 THE WITNESS: Oh, he said a concern. No, sir. I
06:17:24 17 didn't have a -- there were few -- there were problems but they
06:17:28 18 were dealt with. But the concern, it was always concern.

06:17:32 19 THE COURT: I had thought that discipline was always a
06:17:33 20 concern.

06:17:35 21 THE WITNESS: Yes, sir.

06:17:35 22 THE COURT: Any school.

06:17:36 23 THE WITNESS: Yes, sir. That's why I answered the way
06:17:37 24 I did. Definitely a concern always.

06:17:41 25 Q. (BY MR. FELDMAN) I thought you testified that this one

06:17:42 1 wasn't a concern at the high school?

06:17:44 2 A. Oh, no, sir. I said -- it's a concern.

06:17:46 3 Q. Well, then, let me rephrase my question. Are you saying

06:17:49 4 that there were never any discipline problems?

06:17:52 5 A. Oh, no, sir. You did not -- sir, that wasn't what you asked

06:17:55 6 me. You asked me if it was a concern. I said, yes, sir.

06:18:01 7 Q. You can have a school, can you not, Mr. McDaniel, where the

06:18:08 8 perception of the community is that it is a well-disciplined

06:18:13 9 student body. Would you agree with me? You could have a

06:18:17 10 school --

06:18:17 11 A. Well-behaved student body, but we all are teachers, we're

06:18:22 12 training children to behave all the time.

06:18:25 13 Q. The students are well-behaved, the actual disciplinary

06:18:27 14 infractions are minimal. You could have a school like that, can

06:18:31 15 you not?

06:18:31 16 A. Yes, sir.

06:18:32 17 Q. And you could also have a school that has a reputation of

06:18:34 18 not having good discipline, that the students aren't

06:18:39 19 well-behaved, that there are problems with discipline in the

06:18:42 20 classrooms.

06:18:44 21 A. Yes, sir. You could have a school like that, yes, sir.

06:18:48 22 Q. Well, let us take the Hearne schools.

06:18:51 23 A. All right.

06:18:51 24 Q. During the period that you were at Blackshear, what was the

06:18:57 25 reputation of discipline at Blackshear?

06:19:00 1 A. The reputation -- the reputation was -- is that the
06:19:04 2 guidelines that we had in place for discipline were followed.
06:19:09 3 Q. Was it considered to be a well-disciplined student body?
06:19:13 4 A. Well, the perception they had is if the students broke the
06:19:18 5 rules, they had to take the consequences.
06:19:27 6 Q. Were the students generally well-behaved?
06:19:27 7 A. Yes, sir.
06:19:27 8 Q. What about East Side during a light period of time, what was
06:19:30 9 the reputation with East Side with respect to the behavior of the
06:19:32 10 student body?
06:19:37 11 A. That I'm not really, really sure, but I -- usually the
06:19:47 12 smaller the children, you have different types of problems. So
06:19:49 13 generally you don't have the same types of problems.
06:19:52 14 Q. Did you have any children at East Side?
06:19:54 15 A. Yes.
06:19:55 16 Q. Did you -- you visited East Side from time to time?
06:19:58 17 A. Yes.
06:19:59 18 Q. Did you have -- did you believe that the children at East
06:20:04 19 Side --
06:20:05 20 A. In his class, yes. He was in the top group. They were
06:20:07 21 well-behaved.
06:20:07 22 Q. Top group meaning?
06:20:09 23 A. Meaning that he was in that --
06:20:12 24 Q. The higher academic standing?
06:20:14 25 A. Uh-huh.

06:20:14 1 Q. What about the behavior of the students in the other
06:20:17 2 classes?

06:20:18 3 A. I'd heard that there were problems of those when you put all
06:20:20 4 of the little kids together, then they were more challenging to
06:20:25 5 control.

06:20:26 6 Q. When you put all the little kids together meaning all the
06:20:28 7 kids of different races?

06:20:29 8 A. All of the children who were not achieving at the same level
06:20:34 9 together, then they were more challenging.

06:20:38 10 Q. Incidentally, I thought you were suggesting in your
06:20:43 11 testimony this morning that ability grouping is racist. Is that
06:20:48 12 what you were telling this court?

06:20:50 13 A. No, sir.

06:20:52 14 Q. In fact, there is ability grouping today in many schools
06:20:58 15 through the use of gifted and talented programs, isn't there?

06:21:03 16 A. Yes.

06:21:04 17 MR. CASPAR: Object to the form of the question.

06:21:07 18 Q. (BY MR. FELDMAN) And you don't consider that to be racist?

06:21:09 19 A. What is that?

06:21:09 20 Q. Gifted and talented programs, do you believe that concept to
06:21:14 21 be racist?

06:21:14 22 A. No, I don't.

06:21:19 23 Q. They asked you about the behavior of the students at East
06:21:22 24 Side and Blackshear during the time that you were at Blackshear;
06:21:26 25 that's one of your period. What was the reputation of the junior

06:21:30 1 high in terms of the behavior of its students?

06:21:35 2 A. While I was at Blackshear?

06:21:36 3 Q. Yes, sir.

06:21:37 4 A. Sometimes they were categorized as being kind of loud and I

06:21:46 5 just --

06:21:47 6 Q. Unruly?

06:21:49 7 A. -- loud. They talked loud. They had halls -- you know,

06:21:51 8 halls and the halls would get pretty loud.

06:21:56 9 Q. And what about at the high school during that period of time

06:22:01 10 while Mr. Jackson was the principal? What was the general

06:22:07 11 perception of the behavior of the student body at the high

06:22:10 12 school?

06:22:10 13 A. If you didn't behave, you get run off. You get put out.

06:22:15 14 Q. And that didn't continue in the same way after Mr. Jackson

06:22:22 15 retired, did it?

06:22:26 16 A. Some were. Some were sent out, but I think there were

06:22:29 17 concern about too many being sent out or just, quote, run off

06:22:34 18 from school.

06:22:35 19 Q. It wasn't as tight a ship in terms of maintaining discipline

06:22:37 20 in the high school after Mr. Jackson retired, was it?

06:22:41 21 A. No. It was different.

06:22:45 22 Q. And that was in the early '90s?

06:22:47 23 A. Yes, sir.

06:22:55 24 Q. Just to get an idea of the administration of Hearne High

06:23:04 25 School -- excuse me, of the Hearne Independent School District,

06:23:07 1 at the time that you became superintendent?

06:23:10 2 A. Yes, sir.

06:23:10 3 Q. In 1996, you had a principal at East High School?

06:23:16 4 A. Yes, sir.

06:23:16 5 Q. Is that correct?

06:23:16 6 A. Yes, sir.

06:23:17 7 Q. Each school, all four schools. You had various other
06:23:24 8 administrators, as well, did you not?

06:23:27 9 A. Yes, sir.

06:23:28 10 Q. You had a director of maintenance, director of
06:23:34 11 transportation, the director of finance, director of food
06:23:39 12 services, director of curriculum, and a director of athletics; is
06:23:44 13 that the case?

06:23:45 14 A. Yes, sir.

06:23:50 15 Q. Now, do you know how many principals they had at Mumford
06:23:55 16 when you were the superintendent at Hearne I.S.D. during that
06:23:59 17 period of 1996 to 2002? Do you know how many principals they had
06:24:07 18 at Mumford?

06:24:10 19 A. I think I know.

06:24:11 20 Q. And how many was that?

06:24:12 21 A. One.

06:24:13 22 Q. And, in fact, wasn't the principal the superintendent?

06:24:16 23 A. Yes, sir, I think so.

06:24:18 24 Q. The -- and if you were to compare the administrations of the
06:24:21 25 two school districts -- and I recognize that Hearne is a larger

06:24:26 1 school district. But the administration that is maintained, the
06:24:32 2 personnel maintained as administrators at Hearne I.S.D. has been
06:24:38 3 historically substantially greater than that at Mumford; isn't
06:24:41 4 that correct?

06:24:41 5 A. Yes, sir. But may I ask you something, sir?

06:24:44 6 Q. Well, I don't think it's appropriate for you to ask me a
06:24:47 7 question. But certainly --

06:24:50 8 THE COURT: Do you understand the question?

06:24:51 9 A. One thing he said there was when he's talking about the
06:25:04 10 number of personnel, all those positions that he named off, one
06:25:04 11 person took care of two or three of those. So those weren't
06:25:06 12 separate people.

06:25:07 13 Q. (BY MR. FELDMAN) All right. Thank you for the
06:25:07 14 clarification. How many people -- how many administrators were
06:25:12 15 working at Hearne I.S.D. during the period of time that you were
06:25:17 16 superintendent?

06:25:19 17 A. During the time I was superintendent, let's see, we have,
06:25:21 18 what, four principals, you said, and then, we had a gentleman who
06:25:24 19 was in charge of food services and in charge of transportation.
06:25:31 20 We had a curriculum director. And the business manager was -- we
06:25:39 21 had a business manager. And we had an administrative assistant
06:25:44 22 person.

06:25:45 23 Q. Could you answer the -- how many is that that you had?

06:25:48 24 A. I didn't count them up. Let's see.

06:25:49 25 Q. About ten or 12 administrators?

06:25:52 1 A. No, sir. We didn't have that many. Let me see. Eight or
06:26:00 2 -- eight or nine is what I have.

06:26:05 3 Q. Compared to one at Mumford?

06:26:09 4 A. Yes.

06:26:11 5 Q. Now, Mumford, in its heyday, was, what, perhaps one-third
06:26:18 6 the size of Hearne?

06:26:23 7 A. I don't know that, sir. I assume you have your numbers
06:26:26 8 there. But we were larger.

06:26:28 9 Q. You have expressed concern about the number of transfers
06:26:32 10 going to Mumford.

06:26:34 11 A. Uh-huh.

06:26:34 12 Q. You said that they started off as a very small school
06:26:38 13 district, and they grew in size from the transfers. Do you have
06:26:41 14 any idea how large they became?

06:26:44 15 A. Two or 300, I think.

06:26:47 16 Q. Well --

06:26:48 17 A. I just know what we had leaving us.

06:26:52 18 Q. You didn't know what you had leaving us?

06:26:54 19 A. I just know what -- the ones that left us.

06:26:59 20 Q. You were testifying that the -- you thought that the
06:27:04 21 transfers began in the early '90s; is that correct?

06:27:09 22 A. I think that's when they started.

06:27:11 23 Q. So the transfers began before you were superintendent?

06:27:16 24 A. Oh, yes, sir.

06:27:17 25 Q. Do you know -- actually know where the transfers were going

06:27:22 1 at that time prior to the time that you were superintendent?

06:27:26 2 A. Some of them. I know where some of them went.

06:27:29 3 Q. Well, weren't some of them going to Gause and Milano?

06:27:33 4 A. Yes, sir.

06:27:33 5 Q. Do you actually have any knowledge that any were going to

06:27:36 6 Mumford at that time? And I'm talking about the period of before

06:27:40 7 you became superintendent.

06:27:41 8 A. Yes, sir. Yes, I did.

06:27:43 9 Q. And how many is that?

06:27:45 10 A. How many students?

06:27:46 11 Q. Yes.

06:27:47 12 A. That were leaving -- let me go back now. When I first

06:27:52 13 became superintendent.

06:27:53 14 Q. No. I'm talking about before you became superintendent.

06:27:55 15 You testified this morning that the transfers began in the early

06:27:59 16 '90s?

06:27:59 17 A. Yes. Uh-huh.

06:28:00 18 Q. During that period of time, between the early '90s and 1996,

06:28:04 19 which I have presumed to be two to three years?

06:28:07 20 A. Yeah. It was not as many until 1992 was when I remember the

06:28:14 21 time I left.

06:28:15 22 Q. In 1992?

06:28:16 23 A. I think that's correct.

06:28:19 24 Q. Where were they going?

06:28:22 25 A. To those places, went to Mumford and Gause and -- Mumford

06:28:27 1 and Gause.

06:28:28 2 Q. What about Milano?

06:28:29 3 A. I don't know. I was still the elementary principal then.

06:28:33 4 Q. Weren't you complaining about Milano in your letters to
06:28:36 5 the --

06:28:36 6 A. Yes, after I became superintendent.

06:28:37 7 Q. Okay. Tell the Court about Gause. What kind of school
06:28:40 8 district is Gause?

06:28:43 9 A. Through sixth grade. They start at the primary and go
06:28:45 10 through sixth grade.

06:28:47 11 Q. Have any white?

06:28:48 12 A. Yes.

06:28:49 13 Q. And has remained heavily white to the present day?

06:28:54 14 A. I think so, sir.

06:28:56 15 Q. You have been to Mumford? You've been to Mumford schools a
06:29:00 16 number of times, have you not?

06:29:02 17 A. Yes. Two or three times, I would say.

06:29:05 18 Q. And you are aware that the student body at Mumford that you
06:29:10 19 observed was a racially diverse student body; isn't that correct?

06:29:18 20 A. I didn't look at the whole student body. I just saw a few
06:29:21 21 of the kids, looking through doors, and things like that.

06:29:24 22 Q. Well, just walking down the hall, you can look at the
06:29:27 23 classroom?

06:29:28 24 A. I didn't see very many black students.

06:29:32 25 Q. But you understand that they did have black students at

06:29:35 1 Mumford?

06:29:36 2 A. Oh, yes.

06:29:36 3 Q. And certainly more than Gause. You understood that, didn't
06:29:39 4 you?

06:29:40 5 A. Yes.

06:29:42 6 Q. And you understand that they had a substantial number of
06:29:45 7 Hispanic students?

06:29:46 8 A. Yes.

06:29:47 9 Q. Always did have a substantial number of Hispanic students?

06:29:50 10 A. I don't know. But I just know that they had -- during this
06:29:52 11 time, they had a lot of Hispanic students.

06:29:58 12 Q. And in 19 -- so you understand that Mumford has historically
06:30:07 13 been, and is today, a minority-majority school district?

06:30:20 14 MR. CASPAR: Object to the form of the question as
06:30:20 15 vague, ambiguous.

06:30:20 16 A. Did I understand --

06:30:21 17 Q. (BY MR. FELDMAN) Do you understand that Mumford has been,
06:30:24 18 and remains today, a minority-majority school district?

06:30:28 19 A. No, sir, I don't.

06:30:29 20 Q. You did not know that?

06:30:31 21 A. Not for a fact because I don't --

06:30:35 22 Q. Well, with respect to the matter of the transfers going out,
06:30:39 23 would it have made any difference?

06:30:41 24 A. You said till today. See, I don't know, really, what today.

06:30:45 25 Q. While you were superintendent there.

06:30:45 1 A. While I was superintendent?

06:30:47 2 Q. Yes.

06:30:48 3 A. I think there were many Hispanic students.

06:30:52 4 Q. You know, do you not, sir, that during the time that you
06:30:54 5 were superintendent at Hearne from 1996 to 2002 that the number
06:31:03 6 of minorities at Mumford I.S.D. exceeded the number of white
06:31:08 7 students?

06:31:09 8 A. I didn't know that.

06:31:10 9 Q. You did not know that?

06:31:11 10 A. No, sir.

06:31:16 11 Q. Would it surprise you if that's what the statistics show?

06:31:20 12 A. Not really.

06:31:25 13 Q. Mumford was K through eight for a long time, was it not?

06:31:30 14 A. Yes, sir.

06:31:31 15 Q. Mumford did not actually begin to take on high school grades
06:31:36 16 until 1998-'99; is that also correct?

06:31:43 17 A. I think so.

06:31:45 18 Q. In fact, 1998-'99 was when they added a ninth grade. You
06:31:52 19 understand, then, that they added the next -- they added a tenth
06:31:57 20 grade in '99-2000. Do you understand that?

06:32:01 21 A. Right. I remember the superintendent telling us.

06:32:02 22 Q. The eleventh grade in 2000-2001 and the twelfth grade in
06:32:07 23 2001-2002. Do you understand that?

06:32:13 24 A. Yes. I had been told that.

06:32:15 25 Q. And in 1997-'98, Mumford, which had been an old, old school

06:32:25 1 house, opened up a new building, did it not?

06:32:32 2 A. And the year again, sir, was?

06:32:34 3 Q. '97-'98.

06:32:36 4 A. I would assume that's correct. I don't know for sure.

06:32:41 5 Q. At the time that Mumford opened up this brand-new building

06:32:44 6 to educate students K through eight, what was the state of

06:32:50 7 facilities at Hearne I.S.D?

06:32:54 8 THE COURT: I didn't hear the question.

06:32:55 9 Q. (BY MR. FELDMAN) What was the state of facilities at Hearne

06:32:57 10 I.S.D?

06:33:01 11 A. Well, the facilities had been there a long time.

06:33:08 12 Q. Well, how long is a long time?

06:33:11 13 A. The high school section of the high school was built in

06:33:15 14 1972, I think.

06:33:17 15 Q. Wasn't the original construction of the high school in 1960?

06:33:31 16 A. That would have been the year I graduated from high school.

06:33:33 17 I think thereabouts.

06:33:34 18 Q. All right.

06:33:35 19 A. I could --

06:33:37 20 Q. So by the time Mumford opened up its new school in '97-'98,

06:33:42 21 the high school was 36, 37 years old at Hearne?

06:33:47 22 A. Yes.

06:33:47 23 Q. What about Blackshear, where you were principal? When was

06:33:52 24 Blackshear built?

06:33:53 25 A. One part of it built was as far -- we trace back to 1935.

06:33:58 1 Q. And you say one part of it was built.

06:34:02 2 A. Right. That's the oldest part. Some of it burned down over
06:34:06 3 the years. The oldest part, I think we traced back to as early
06:34:14 4 as 1935.

06:34:15 5 Q. And is that still being used today?

06:34:17 6 A. Yes.

06:34:18 7 Q. And Mumford, obviously, and its new building was educating
06:34:25 8 the same grade level students as you had at Blackshear, was it
06:34:31 9 not?

06:34:32 10 A. Yes.

06:34:34 11 Q. Well, I'm curious. I'm curious, Mr. McDaniel. If you had a
06:34:40 12 -- if one of your children was going to an elementary school that
06:34:47 13 had been built approximately 70 years before your child went to
06:34:54 14 school and your child also had an opportunity to go to a
06:35:00 15 brand-new school house, is that something that as a parent you
06:35:05 16 would give consideration to?

06:35:09 17 A. No, sir.

06:35:11 18 Q. So the state-of-the-art of the facility would not be an
06:35:14 19 issue that you, as a parent, would consider?

06:35:21 20 MR. CASPAR: Objection. Asked and answered.

06:35:23 21 A. No, sir. I would consider the teaching staff. Learning
06:35:30 22 would be first and foremost important.

06:35:33 23 Q. (BY MR. FELDMAN) But is it your testimony, before this
06:35:35 24 court, that facilities don't matter?

06:35:37 25 A. Oh, no, sir. The first priority, if they talk to me about

06:35:43 1 that, then I want to know about the teachers.

06:35:45 2 Q. All right. But you'd also like to know what the state of
06:35:47 3 the facility are, wouldn't you?

06:35:49 4 A. Oh, yes, sir.

06:35:50 5 Q. That was certainly significant to you as principal of
06:35:53 6 Blackshear, wasn't it?

06:35:54 7 A. Yes, sir.

06:35:54 8 Q. Wouldn't you far have preferred to be in a modern elementary
06:35:58 9 school building?

06:36:07 10 A. Not necessarily. We worked and made that one look very
06:36:07 11 nice. I did it myself.

06:36:08 12 Q. But certainly a significant part of your time as
06:36:12 13 administrator and as a superintendent was spent on issues
06:36:16 14 relating to facilities, wasn't it?

06:36:19 15 A. Yes, sir.

06:36:23 16 Q. Now, in terms of other thing -- or other comparisons or
06:36:28 17 elements that one compares school districts with, you've already
06:36:33 18 testified that the administrative staff was substantially larger
06:36:36 19 at Hearne.

06:36:38 20 What about teacher salaries? You talked about the
06:36:46 21 teaching staff being important. That if you were a parent, you
06:36:50 22 would be first concerned about the quality of the teaching staff?

06:36:55 23 Mumford has historically paid its teachers more than
06:36:59 24 Hearne has, hasn't it?

06:37:01 25 A. I think that's correct.

06:37:03 1 Q. Well, don't you think the amount of money that you pay in
06:37:05 2 salary to a teacher can have an effect on the quality of teacher
06:37:09 3 that you attract?

06:37:11 4 A. It could have.

06:37:14 5 Q. And if you were a parent and you had -- your child was going
06:37:20 6 to a school district where you thought the teaching staff or
06:37:25 7 school, rather, where you thought the teaching staff was not as
06:37:27 8 good as that which would be -- could be found in another school,
06:37:33 9 in a different school district, would you give consideration to
06:37:38 10 possibly transferring your student?

06:37:40 11 A. I would give consideration, yes, sir.

06:37:46 12 Q. As a parent that would be a matter of concern, would it not?

06:37:49 13 A. The teaching staff would be most concern, yes.

06:37:52 14 Q. And if you're a parent, regardless of race, whether you're
06:37:55 15 white, black, Hispanic, if you believe that you could transfer
06:37:58 16 your child to another school, in a different school district
06:38:02 17 where they would receive a better quality education because of
06:38:06 18 the teaching staff, you would certainly give consideration to
06:38:10 19 that, would you not?

06:38:12 20 MR. CASPAR: Object to the relevance of the question.

06:38:14 21 THE COURT: Did I hear an objection?

06:38:16 22 MR. CASPAR: Your Honor, I object to the relevance of
06:38:17 23 the question.

06:38:18 24 THE COURT: I overrule the objection. Go ahead and
06:38:22 25 answer the question.

06:38:23 1 A. All right. Let's see now. Can you ask again, sir? Can you
06:38:28 2 give me that question again, please?

06:38:30 3 Q. (BY MR. FELDMAN) Certainly. If you are a parent whether you
06:38:32 4 are white, black, brown, and you have an opportunity to transfer
06:38:41 5 your student to a school district that has a teaching staff that
06:38:46 6 was superior to the one that you're -- to the school that your
06:38:50 7 child is in, you would -- you would give consideration to that,
06:38:54 8 would you not?

06:38:57 9 A. Maybe a little bit of consideration.

06:39:02 10 Q. What about the sports programs at Hearne? Hearne offers the
06:39:09 11 complete array of sports that the State of Texas can offer, does
06:39:15 12 it not?

06:39:16 13 A. Yes, sir. That's correct.

06:39:17 14 Q. It has a significant football program?

06:39:21 15 A. Yes, football.

06:39:21 16 Q. Basketball program?

06:39:22 17 A. Yes.

06:39:23 18 Q. Baseball program; is that correct?

06:39:27 19 A. When I was there, yes, we did, uh-huh.

06:39:29 20 Q. Those big white kids that you referred to earlier in your
06:39:35 21 testimony?

06:39:35 22 A. Yes.

06:39:36 23 Q. That you were losing to transfers --

06:39:38 24 A. Yes --

06:39:38 25 Q. -- to Mumford, is --

06:39:41 1 A. -- they were leaving Hearne.

06:39:43 2 Q. Well, were these big white kids going to Mumford?

06:39:48 3 A. No. I think they were transferring out of Hearne I.S.D.

06:39:52 4 Q. It wouldn't make much sense if these big white jocks were

06:39:55 5 going to Mumford, would it?

06:39:57 6 A. No. That -- I'd say they were transferring out of Hearne.

06:40:01 7 Q. They don't have a football program at Mumford, do they?

06:40:04 8 A. No.

06:40:04 9 Q. In fact, what Mumford's reputation is is that their emphasis

06:40:08 10 is all academics; isn't that the reputation?

06:40:14 11 A. I don't think so.

06:40:16 12 Q. Does it have a sports program to speak of?

06:40:19 13 A. Yes. Basketball program. I've seen them on the classroom

06:40:26 14 champions on TV. Turn the TV on, there they are.

06:40:31 15 Q. But that's only over the last couple of years, isn't it?

06:40:34 16 A. I was speaking about earlier when I made that statement,

06:40:36 17 much earlier.

06:40:38 18 Q. You were speaking about what?

06:40:39 19 A. When we lost the big white kids, when my children were in

06:40:41 20 school and played football.

06:40:46 21 Q. What was that, the '70s, the '80s?

06:40:50 22 A. '80s, uh-huh, yes.

06:40:51 23 Q. You're not complaining about -- where were the kids

06:40:55 24 transferring to in the '80s? Where were students from Hearne

06:41:01 25 transferring to in the 1980s?

06:41:05 1 A. Okay. Maybe I misunderstood what you said, then.

06:41:07 2 Q. You testified this morning that you were talking about --

06:41:12 3 A. I'm talking about now. I'm talking about now and that we

06:41:15 4 don't have. I've heard parents talk about that, and then, people

06:41:20 5 in the community, all about white kids that go on. We don't have

06:41:31 6 them in the athletic programs anymore, like we used to.

06:41:31 7 Q. Well, you made a specific mention of the big white kids?

06:41:31 8 A. Yes, sir.

06:41:31 9 Q. That's right. And those big white kids are not going

06:41:34 10 Mumford I.S.D?

06:41:35 11 A. Okay.

06:41:35 12 Q. Isn't that correct?

06:41:37 13 A. I don't know, sir.

06:41:38 14 Q. Well, if it's a football player, can you imagine why they

06:41:41 15 would transfer to a school that doesn't have a football program?

06:41:44 16 A. Well, now, they have -- they probably have some there. They

06:41:48 17 play basketball and they have other sports.

06:41:52 18 Q. But I thought you were referring to the football team in

06:41:56 19 particular?

06:41:57 20 A. Yeah, but I don't think that I testified that they were

06:41:58 21 going to Mumford.

06:41:59 22 Q. So the Robertson County is known for all of its tall white

06:42:05 23 basketball players?

06:42:05 24 A. No. They're -- yes. Not all of them, but they have some

06:42:09 25 good basketball players, Robertson County. Got white basketball

06:42:15 1 players.

06:42:16 2 Q. I thought you were talking about when you were the

06:42:18 3 superintendent of the school district --

06:42:19 4 A. Yes.

06:42:20 5 Q. -- from 1996 to 2001?

06:42:22 6 A. Yes.

06:42:22 7 Q. Did Mumford even have a basketball program during those

06:42:25 8 years?

06:42:26 9 A. I think they started one.

06:42:28 10 Q. Well, they only reached the junior year by the time you

06:42:35 11 retired.

06:42:35 12 A. They hired one of the personnel, the head coach of

06:42:40 13 basketball, I think, is what I was told -- is what the employee

06:42:42 14 told me.

06:42:44 15 Q. But in 2001, by the time you retired, Mumford High School

06:42:49 16 only went through the junior year. They didn't have a regular

06:42:55 17 varsity basketball team at that time, did they?

06:43:00 18 A. I don't know what the young man was hired for, but he told

06:43:03 19 me that was what he was going to help the coach basketball.

06:43:06 20 Q. Objection. Nonresponsive.

06:43:07 21 THE COURT: I overrule the objection.

06:43:11 22 Q. (BY MR. FELDMAN) Mr. McDaniel?

06:43:13 23 A. Yes, sir.

06:43:14 24 Q. I just want to try and understand your testimony.

06:43:16 25 A. All right.

06:43:18 1 Q. You said in your testimony this morning that the big white
06:43:21 2 kids were transferring to Mumford. Now you say what you really
06:43:25 3 meant was that they were transferring but not necessarily to
06:43:28 4 Mumford?

06:43:30 5 A. I said they were transferring to Mumford, sir?

06:43:32 6 Q. That was my understanding of your testimony.

06:43:34 7 MR. CASPAR: Objection. Mischaracterizing the witness'
06:43:36 8 testimony.

06:43:38 9 Q. (BY MR. FELDMAN) As you sit here today --

06:43:41 10 MR. CASPAR: My objection is he's mischaracterizing the
06:43:44 11 witness' prior testimony.

06:43:47 12 THE COURT: I'm not hearing it. What did you say?

06:43:48 13 MR. CASPAR: I'm sorry, your Honor. I just object to
06:43:51 14 counsel's mischaracterizing the witness' prior testimony.

06:43:54 15 THE COURT: Mischaracterization. I'll overrule the
06:43:58 16 objection. Go ahead. Let's get this over with.

06:44:01 17 MR. FELDMAN: Yes, your Honor.

06:44:02 18 Q. (BY MR. FELDMAN) Well, you were speaking -- just tell me
06:44:05 19 this. Were you speaking to the time that you were the
06:44:07 20 superintendent from '96 to 2001?

06:44:09 21 A. That's when I heard those comments, yes.

06:44:13 22 Q. I would like to direct your attention to some exhibits. If
06:44:20 23 you can find -- there are some exhibit notebooks that I'm going
06:44:23 24 to reference you to.

06:44:36 25 And, firstly, I would like for you to look at Exhibit

06:44:41 1 202. Your Honor, may I approach? I'm sorry.

06:44:45 2 THE COURT: Yes.

06:45:21 3 MR. CASPAR: Your Honor, the United States objected to
06:45:24 4 Exhibit 202 on relevance grounds.

06:45:27 5 MR. FELDMAN: Your Honor, Exhibit 202 is the 2002
06:45:31 6 district accountability data for the Hearne Independent School
06:45:35 7 District that is published by the Texas Education Agency and is a
06:45:40 8 matter of public record. Mr. Caspar, this morning, elicited
06:45:47 9 testimony from the witness about the number of dropouts that they
06:45:52 10 were experiencing and how -- why that came about, and what effect
06:45:58 11 it had.

06:46:00 12 Well, these documents speak directly to that issue.

06:46:03 13 THE COURT: Oh, well, I overrule the objection. Go
06:46:06 14 ahead.

06:46:08 15 MR. FELDMAN: Your Honor, we would offer 202 into
06:46:09 16 evidence.

06:46:11 17 THE COURT: It's already been admitted, as I understood
06:46:12 18 -- you objected, you say?

06:46:13 19 MR. CASPAR: That's right, your Honor.

06:46:16 20 THE COURT: And your objection is what?

06:46:18 21 MR. CASPAR: Relevance, your Honor. We don't see how
06:46:20 22 it's relevant to this case.

06:46:21 23 THE COURT: Well, I'll overrule the objection. It will
06:46:23 24 be admitted.

06:46:25 25 Q. (BY MR. FELDMAN) Do you have the document before you, Mr.

06:46:27 1 McDaniel?

06:46:28 2 A. 202, sir?

06:46:29 3 Q. Yes, sir.

06:46:29 4 A. Yes, sir.

06:46:32 5 Q. Do you see that that is the 2001 District Accountability
06:46:34 6 Data Table?

06:46:35 7 A. Yes, sir.

06:46:36 8 Q. And it shows that in the year 1999-2000, Hearne I.S.D. had a
06:46:47 9 significant number of dropouts, did it not?

06:46:58 10 A. 1999-2000. I see 1998-'99. It's more than one sheet.

06:47:04 11 Q. It's right there on the first page.

06:47:06 12 MR. CASPAR: I object to the form of the question in
5:47:08 13 terms of significant. I don't know what counsel means by
06:47:10 14 significant.

06:47:11 15 Q. (BY MR. FELDMAN) Well, as a result of -- I'm sorry, your
06:47:13 16 Honor.

06:47:13 17 A. I have it.

06:47:14 18 THE COURT: Well, it shows a dropout rate of 1.8
06:47:16 19 percent.

06:47:17 20 MR. FELDMAN: Your Honor, that's for '98 and '99. If
06:47:20 21 you look at '99-2000, which is on the left-hand side, you see
06:47:24 22 much bigger numbers.

06:47:27 23 THE COURT: All right. It says, all students, 7.1
06:47:29 24 percent, African-Americans, 8.8 percent, Hispanic, 8.1 percent,
06:47:36 25 white, 2.2 percent.

06:47:38 1 MR. FELDMAN: That is correct. It also shows that from
06:47:41 2 '98-'99 to '99-2000, the number of students who dropped out of
06:47:49 3 the school district increased from 11 to 42.

06:47:55 4 THE COURT: Where is that?

06:47:57 5 MR. FELDMAN: Right there, the very first line where it
06:48:00 6 says, "All students." If you look at '99-2000, it shows number
06:48:05 7 of dropouts, 42. You go five columns to the right under '98 and
06:48:10 8 '99, it shows number of dropouts, 11.

06:48:14 9 THE COURT: All right. Go ahead.

06:48:17 10 Q. (BY MR. FELDMAN) So the number of dropouts at Hearne from
06:48:22 11 '98-'99 to '99-2000 nearly quadrupled; isn't that right?

06:48:28 12 A. Yes.

06:48:29 13 Q. And as a result of that, Hearne was declared to be
06:48:35 14 academically unacceptable by the Texas Education Agency; is that
06:48:39 15 right?

06:48:40 16 A. Because of dropouts.

06:48:41 17 Q. Yes.

06:48:41 18 A. Not academically.

06:48:44 19 Q. Yes.

06:48:45 20 A. Correct.

06:48:48 21 Q. That is true. And this declaration was made in 2001, was it
06:48:52 22 not?

06:48:53 23 A. Yes, sir.

06:48:55 24 Q. And in -- the year 2001, Hearne Independent School District
06:49:00 25 was the only school district in the State of Texas that was rated

06:49:04 1 academically unacceptable; is that true?

06:49:08 2 A. Due to dropouts, yes, sir.

06:49:09 3 Q. It was the only school district in the state rated

06:49:14 4 academically unacceptable; is that true?

06:49:21 5 A. No, sir.

06:49:21 6 Q. You thought there were others?

06:49:22 7 A. No. It was due to dropouts.

06:49:24 8 Q. I understand it was due to your dropouts. But I'm asking
06:49:27 9 you, sir, do you know any other school district in the State of

06:49:29 10 Texas --

06:49:29 11 A. No, sir.

06:49:30 12 Q. -- in the year 2001 that was rated academically
5:49:34 13 unacceptable?

06:49:34 14 A. No, sir.

06:49:34 15 Q. So Hearne I.S.D. --

06:49:37 16 MR. HEPWORTH: Objection, your Honor. This has been
06:49:38 17 asked three times now.

06:49:39 18 THE COURT: Yes. I understand.

06:49:41 19 MR. FELDMAN: Your Honor, I apologize. I wanted to
06:49:43 20 make sure that the record was clear.

06:49:44 21 A. It was due to dropouts, sir.

06:49:48 22 Q. (BY MR. FELDMAN) Now, you testified this morning --

06:49:49 23 THE COURT: Well, let me ask a question of the witness.

06:49:55 24 In this report indicates that the quality of the academic

06:50:01 25 instruction had declined?

06:50:03 1 THE WITNESS: No, sir.

06:50:04 2 THE COURT: All right. Go ahead.

06:50:06 3 Q. (BY MR. FELDMAN) You testified this morning, though, that
06:50:09 4 your TAAS scores were going down as a result of transfers, did
06:50:14 5 you not? Didn't you testify that while you were superintendent,
06:50:20 6 your TAAS scores, your testing scores required by the state, were
06:50:26 7 going down because of transfers?

06:50:31 8 A. I don't remember stating it in those terms.

06:50:34 9 Q. Well, were -- was the TAAS performance or the TAAS scores --
06:50:40 10 and today, of course, we call it TAKS. Back when you were
06:50:44 11 superintendent it was TAAS?

06:50:45 12 A. Yes.

06:50:46 13 Q. During your period of time as superintendent, did those
06:50:49 14 scores go down?

06:50:53 15 A. For some groups, but not all. In some they went up.

06:50:58 16 Q. So is it fair to draw any kind of connection between the
06:51:06 17 student transfers going out of Hearne and the changing data of
06:51:14 18 the Hearne test scores?

06:51:17 19 A. I think there could be.

06:51:20 20 Q. Well, do you know that there is?

06:51:23 21 A. Well, when you take the students who normally would pass all
06:51:31 22 of the TAAS tests and you invite those to go to another district,
06:51:35 23 then that takes away some of those who would have in our count.

06:51:41 24 Q. When you say you invite those who were doing better to go to
06:51:46 25 another school district, well, you'd be talking about inviting

06:51:51 1 those whether they're white, black or brown?

06:51:56 2 A. Yes.

06:51:57 3 Q. So, sir, let me show you a poster board.

06:52:06 4 A. Yes, sir.

06:52:07 5 Q. Which is a --

06:52:09 6 THE COURT: Doctor, can you see that?

06:52:10 7 THE WITNESS: Yes, sir.

06:52:12 8 MR. FELDMAN: Your Honor, I'll be glad to put this in a
06:52:14 9 different position if the Court wants me to.

06:52:16 10 THE COURT: Go ahead.

06:52:26 11 Q. (BY MR. FELDMAN) This chart, which is an exhibit of the
06:52:32 12 United States of America in this case, No. 237 -- I believe you
06:52:37 13 have 237 in your book before you, which might help you a little
06:52:42 14 bit.

06:52:42 15 A. 237. Seems like I'm stopping at 224. I'm stopping at 224.
06:52:56 16 But I can see that, though. Am I supposed to be?

06:53:05 17 Q. Here you go.

06:53:22 18 A. I have it, sir.

06:53:24 19 Q. All right, sir. This is the first page of that exhibit
06:53:29 20 which reflects the ethnicity data of Hearne I.S.D. for the
06:53:37 21 '96-'97 through the '98-'99 school years. Do you see that, sir?

06:53:41 22 A. Yes, sir.

06:53:42 23 Q. That was the first three years of your superintendency ; is
06:53:49 24 that correct?

06:53:50 25 A. '96 through -- yes, sir.

06:53:52 1 Q. If you focus on 1998-'99, there would be the first year
06:53:59 2 where there appears to be accurate data with respect to outgoing
06:54:04 3 transfers from Hearne I.S.D.; is that true?
06:54:11 4 A. Let's see, outgoing, yes, sir.
06:54:13 5 Q. And do you notice, sir, that out of a residential population
06:54:19 6 of 487 Hispanic students that 102 were transferring?
06:54:29 7 A. Yes, sir.
06:54:30 8 Q. So, approximately, 20 percent of the available Hispanic
06:54:36 9 student body in the community of Hearne was going -- they were
06:54:40 10 going to a different school district?
06:54:43 11 A. Yes, sir.
06:54:43 12 Q. Now, is it your testimony that those 102, the approximately
06:54:50 13 20 percent who didn't want to go, or chose not to go, to Hearne
06:54:53 14 were academically advanced?
06:55:01 15 A. I'm not -- no, I'm not saying that.
06:55:03 16 Q. Well, you were saying it was the better students that were
06:55:06 17 transferring out.
06:55:06 18 A. According to the information that I've read.
06:55:12 19 Q. What information was that?
06:55:13 20 A. I read something once that showed that someone was making
06:55:18 21 the -- well, they were advertising that you have good TAAS
06:55:25 22 scores, and you're not discipline problems, and good attendance.
06:55:33 23 THE COURT: Well, you're referring to that document
06:55:35 24 that's been previously referred to.
06:55:37 25 THE WITNESS: Yes, sir.

06:55:38 1 THE COURT: Where the Mumford School District was
06:55:43 2 saying that they would accept transfers on certain conditions?

06:55:47 3 THE WITNESS: Yes, sir.

06:55:48 4 Q. (BY MR. FELDMAN) Do you understand, sir, that that document
06:55:53 5 was published in '98-'99 school year?

06:56:00 6 A. I don't remember the year.

06:56:01 7 Q. Wasn't it the first year that Mumford was offering the ninth
06:56:06 8 grade?

06:56:08 9 A. I don't even know that, sir.

06:56:09 10 Q. Well, would it make a difference to you if that document,
06:56:14 11 although we will -- the evidence will show it was never enforced
06:56:17 12 -- would it make a difference to you that that was just for ninth
06:56:23 13 graders?

06:56:27 14 A. It could have been.

06:56:29 15 Q. So there would have been no solicitation of students at the
06:56:30 16 lower grades where TAAS testing takes place?

06:56:38 17 THE COURT: What is your question?

06:56:39 18 MR. FELDMAN: I'm asking -- the witness has testified
06:56:43 19 that better academically performing students were solicited
06:56:49 20 because he believes that because of this document that referred
06:56:54 21 to ninth graders in '98-'99, the first year.

06:56:59 22 THE COURT: Does it state in the document that it has
06:57:00 23 to do with ninth grade?

06:57:02 24 MR. FELDMAN: Yes, sir. The evidence will show that.
06:57:04 25 We haven't gotten to that yet, but it does.

06:57:07 1 THE COURT: Well, does the document itself state that?
06:57:10 2 That's what I'm asking.

06:57:11 3 MR. FELDMAN: It references the new ninth grade. In
06:57:14 4 connection with TAKS -- excuse me, TAAS testing.

06:57:20 5 THE COURT: I'll look at it, counsel.

06:57:22 6 Q. (BY MR. FELDMAN) What about the 34 black students who in
06:57:28 7 1998-'99 chose not to attend Hearne I.S.D? Were those the better
06:57:37 8 black students?

06:57:40 9 A. The ones I remember were.

06:57:44 10 Q. Well, why do you suppose better black students would choose
06:57:49 11 to leave Hearne I.S.D?

06:57:51 12 A. I don't know. But I know one thing. I know one parent told
06:57:53 13 me while I was a parent -- parent of a black student came in with
06:57:59 14 an article from the Houston Chronicle that said smaller schools
06:58:02 15 are better. She says, so it's nothing against you, Mr. McDaniel,
06:58:07 16 I'm going to take them to Mumford. I grew up there, so I'm going
06:58:10 17 to take them to Mumford. So that's what was said. Now, one,
06:58:13 18 this was a student that was a very good student.

06:58:15 19 Q. Smaller schools are better?

06:58:17 20 A. That's what she said was her reason.

06:58:19 21 Q. Do you agree with that?

06:58:19 22 A. No.

06:58:22 23 Q. So other than that anecdotal remark of the one parent, you
06:58:28 24 have no knowledge as to whether or not the black students who
06:58:31 25 were leaving -- who were exempt, for example, left Hearne in

06:58:38 1 '1998-'99, were better academically performing students?

06:58:52 2 A. Some were, but they came back to me.

06:58:52 3 Q. Oh, okay. So the only evidence you have as to why they
06:58:52 4 left, in the first place, was the -- what this parent commented
06:58:54 5 to you about?

06:58:56 6 A. No.

06:58:56 7 Q. Is that it?

06:58:57 8 A. That was one. I just remember that specific incident. This
06:58:59 9 is what he told me. Then, you asked about the black students and
06:59:02 10 that's what she told me. But then, some of those that who
06:59:05 11 weren't good students left, but they were sent back to me while I
06:59:09 12 was principal.

06:59:10 13 Q. So some of them came back?

06:59:12 14 A. Yes, sir.

06:59:13 15 Q. Were they from Mumford?

06:59:14 16 A. No. They were from Hearne.

06:59:16 17 Q. No. Excuse me. I'm sorry. Did they transfer to Mumford
06:59:19 18 and then, they came back to Hearne?

06:59:20 19 A. Yes, sir.

06:59:22 20 Q. Were they transferred --

06:59:23 21 A. They were already in Hearne at Blackshear School, and they
06:59:26 22 left black and went to Mumford. Stayed a while but then, came
06:59:29 23 back.

06:59:30 24 Q. They came back because the -- so when you testified that you
06:59:35 25 were losing through the transfers, you were losing the better

06:59:40 1 academically performing students, well, that was not consistently
06:59:45 2 the case at all, was it?

06:59:47 3 A. For the biggest part, yes.

06:59:48 4 Q. And what evidence do you have to show that? What evidence
06:59:53 5 can you point us to to show that the transfer students that you
06:59:57 6 lost while you were superintendent from '96-'97 to 2000-2001 were
07:00:02 7 the better performing students?

07:00:06 8 A. That's who they kept based on that. They sent some back to
07:00:11 9 me. They weren't good --

07:00:12 10 Q. My point to you, sir -- they sent you back the good
07:00:15 11 performing students?

07:00:16 12 A. The ones that weren't good, the behavior problems.

7:00:18 13 Q. I thought you just testified that they sent the good ones
07:00:20 14 back.

07:00:20 15 A. I just testified that they sent some back to me.

07:00:24 16 Q. The discipline problems?

07:00:25 17 A. Yes, sir.

07:00:25 18 Q. I see. Can you point to any evidence -- refer us to that
07:00:33 19 shows that the students who were transferring out of Hearne
07:00:37 20 during the time you were superintendent were the better
07:00:40 21 academically performing students?

07:00:45 22 A. I might could if I had a little time to get that together.

07:00:48 23 Q. But you can't point to us anything to show that today, can
07:00:52 24 you?

07:00:52 25 A. I don't have those facts. I don't have the -- the data to

07:00:55 1 show that right now.

07:00:56 2 Q. Well, if we -- after looking at that '98-'99 information, we
07:01:07 3 go on to look at the '99-2000, 2000-2001 information, as well as
07:01:21 4 2001-2002. You know, the complete term of your superintendency.

07:01:29 5 You can see that the number of transfers increased
07:01:35 6 across the board with respect to racial group, can you not?

07:01:40 7 A. Yes.

07:01:42 8 Q. So, for example, in '99-2000, if we kind of try to put both
07:01:47 9 these charts together, we follow along, we go from '98-'99 where
07:01:54 10 34 black students transfer out, '99-2000, 41, 2000-2001, 56, and
07:02:06 11 2001-2002, 79. Do you see that?

07:02:11 12 A. Yes, sir.

07:02:11 13 Q. Now, that's a difference in number from 34 to 79, which my
07:02:19 14 math tells me -- I think I'm accurate this time. That's double
07:02:23 15 the amount over a period of four years, the number of blacks
07:02:27 16 leaving the Hearne School District by transfer; is that correct?

07:02:33 17 A. Yes, according to this, uh-huh.

07:02:40 18 Q. Would you agree with that?

07:02:42 19 A. Yes, sir.

07:02:42 20 Q. What do you attribute that to?

07:02:46 21 A. Following others.

07:02:48 22 Q. Following others?

07:02:49 23 A. Following others.

07:02:50 24 Q. Other black students?

07:02:51 25 A. They were just following. That's what some said, they were

07:02:53 1 just going because some of the others were going.

07:02:57 2 Q. Well --

07:02:58 3 A. Wondering why they were going. They didn't know why. They
07:03:00 4 just said they were going because some of the others were
07:03:02 5 starting to go.

07:03:03 6 Q. Were they going to Mumford because there were white students
07:03:06 7 going to Mumford? Were they going to Mumford because some of
07:03:08 8 their friends were going to Mumford?

07:03:11 9 A. They went because white students and friends.

07:03:15 10 Q. White students were going, black students were going, brown
07:03:18 11 students were going. And that impact is reflected in this data,
07:03:26 12 not only for black students but for Hispanic students, as well.

07:03:30 13 If you look at '98-'99, it shows that 102 Hispanic students were
07:03:38 14 transferring out of Hearne I.S.D. Then, we fast-forward to
07:03:46 15 2001-2002 and that's 182 students -- Hispanic students
07:04:01 16 transferring out of Hearne I.S.D. That is by my math an
07:04:01 17 80-percent increase in the number of transfers of Hispanic
07:04:01 18 students over a period of four years. To what do you attribute
07:04:03 19 that?

07:04:04 20 A. They just kept following those who first started.

07:04:07 21 Q. So just kind of a general migration? Is that what your
07:04:13 22 testimony is?

07:04:15 23 A. That's really what they were doing is just once it started,
07:04:19 24 then they just kept going.

07:04:21 25 Q. It couldn't have had anything to do with the fact that the

07:04:24 1 perception of Hearne was that it had disciplinary problems?

07:04:29 2 A. It could have been.

07:04:31 3 Q. Could have anything to do with the fact that in 2000 --

07:04:35 4 excuse me. That in 2001, your school district was rated

07:04:45 5 academically unacceptable. The only one in the state to have

07:04:48 6 such a rating, could that be a factor, as well?

07:04:51 7 A. Due to dropouts, that's -- it could be.

07:04:54 8 Q. Could that be a factor, though, in the perception of people

07:04:57 9 in the community?

07:04:58 10 A. It certainly could be.

07:04:59 11 Q. And a factor if the perception of people around the state as

07:05:02 12 to what kind of school district Hearne I.S.D. is? Couldn't that

07:05:06 13 be a factor?

07:05:07 14 A. It could be.

07:05:08 15 Q. And that might cause people to transfer out; would you agree

07:05:14 16 with me?

07:05:14 17 A. It could.

07:05:16 18 Q. And looking at your drop-out data in the years in which this

07:05:25 19 occurred, you testified, this morning, that you thought that the

07:05:30 20 increase in dropouts was due to the transfers. Do you recall

07:05:36 21 that?

07:05:37 22 MR. HEPWORTH: Objection. That mischaracter -- there

07:05:40 23 was no testimony about that.

07:05:44 24 MR. FELDMAN: All right, sir. Maybe I conjured it up

07:05:46 25 in my mind.

07:05:48 1 Q. (BY MR. FELDMAN) Was there -- in your view, was there a
07:05:49 2 relationship between the number of students dropping out with the
07:05:54 3 number of students that had been transferred?

07:05:57 4 A. State that question again, please.

07:06:00 5 Q. In your mind, was there a relationship between the number of
07:06:03 6 students dropping out and in '99-2000, as reflected on Exhibit 2,
07:06:11 7 and the number of students transferring?

07:06:20 8 A. I'm not sure.

07:06:22 9 Q. And just so I'm clear, I'm asking you whether in your mind,
07:06:25 10 as superintendent at the time, you believe that the transfers
07:06:28 11 impacted your dropout rate.

07:06:36 12 A. The transfers impacted our drop-out rate.

7:06:40 13 Q. Do you believe that?

07:06:41 14 A. I think it had some bearing on it.

07:06:45 15 Q. Well, now, Mumford I.S.D., as of '99-2000, the year in which
07:06:51 16 you had -- the school district Hearne had these large number of
07:06:55 17 dropouts, as shown in Exhibit 202, as of 1999-2000, Mumford High
07:07:02 18 School only went through the tenth grade; isn't that correct?

07:07:08 19 A. That was according to what you explained, yes.

07:07:13 20 Q. Now, in order to drop out, don't you have to be at least 17
07:07:16 21 years of age or you'd be violating the law?

07:07:22 22 A. Yes, sir.

07:07:22 23 Q. And if Mumford did not have a junior or a senior class as of
07:07:28 24 1999-2000, the classes in which you would expect to find
07:07:34 25 17-year-olds and 18-year-old students, how could transfers to

07:07:39 1 Mumford in any way, shape or form have had an impact on the
07:07:44 2 dropout rate at Hearne Independent School District?

07:07:50 3 A. I don't believe it said just specifically Mumford. Just the
07:07:55 4 transfers is probably the way it was stated.

07:07:58 5 Q. Well, would you agree with me that in as much as Mumford
07:08:03 6 I.S.D. in the year that you suffered this significant dropout
07:08:08 7 rate increase, that Mumford I.S.D. could not have been a factor?

07:08:15 8 A. I'm sorry. I can't agree to that.

07:08:17 9 Q. You can't. Even though the kids that were dropping out had
07:08:22 10 to have been of high school age?

07:08:28 11 A. Well, I don't know what other roles could have been played
07:08:31 12 in that.

07:08:33 13 Q. Well, why do you -- your dropouts increased dramatically.
07:08:41 14 Why did you leave if that's the case?

07:08:43 15 A. The dropouts?

07:08:44 16 Q. Yeah.

07:08:45 17 A. Because I failed to get the students recovered.

07:08:50 18 Q. I'm sorry?

07:08:50 19 A. I failed to get some of the students recovered that I should
07:08:53 20 have gotten recovered. That's what that amounted to.

07:08:55 21 Q. Well, these are students who are -- who left the public
07:08:59 22 schools, period. They no longer went to school.

07:09:01 23 A. Right.

07:09:02 24 Q. And you say it's because you didn't get them recovered?

07:09:04 25 A. Right. See --

07:09:06 1 Q. Would you explain what that means?

07:09:07 2 A. Yes, sir. You have a snapshot date there that you can go
07:09:10 3 and -- those kids who dropped out the year before, or whatever,
07:09:15 4 then if you go and get those students enrolled during this --
07:09:28 5 during this October month, and if you keep them there on your
07:09:28 6 roll for the length of that time, then they're not even
07:09:32 7 considered dropouts anymore, even if they drop out after that
07:09:36 8 period is over.

07:09:37 9 You see, so normally at some districts you just go and
07:09:40 10 gather up all of those who dropped out after the snapshot date
07:09:43 11 and get them enrolled back in school, and they're not counted as
07:09:47 12 dropouts.

7:09:48 13 Q. Well, you've got to convince the student to come back, don't
07:09:51 14 you?

07:09:51 15 A. Oh, that's not hard to do.

07:09:52 16 Q. Well, why didn't you do it?

07:09:54 17 A. I failed to get it done. I had a problem with the counselor
07:09:56 18 and personnel and under-staffed, for whatever reason.

07:10:04 19 Q. You just failed to get it done?

07:10:05 20 A. Yes, sir.

07:10:07 21 Q. Now, you were asked about some correspondence that you had
07:10:12 22 had with the -- I'd like to go back to another question with
07:10:22 23 respect to this data.

07:10:26 24 In 2001-2002, it appears to be that the Hispanic
07:10:34 25 students, while their resident population was 552, which I

07:10:42 1 believe they increased, the resident population increased from
07:10:48 2 487 in '98-'99.

07:10:52 3 THE COURT: What year are you referring to?

07:10:53 4 MR. FELDMAN: '98-'99, the resident population of
07:10:56 5 Hispanics was 487. And then, in 2001-2002, the resident
07:11:05 6 population was 552.

07:11:10 7 Q. (BY MR. FELDMAN) Do you see that?

07:11:11 8 A. Yes.

07:11:13 9 Q. Yet, so that's -- that's an increase of about 65 students.
07:11:21 10 And yet, if we look at the Hispanic and actual enrollment in
07:11:27 11 '98-'99, it's 394 kids. And the Hispanic enrollment in 2001-2002
07:11:41 12 is actually less; it's 378 kids.

07:11:45 13 Do you have any explanation why the number of Spanish
07:11:49 14 students -- Hispanic students, rather, or Latino students, would
07:11:54 15 increase by over ten percent, yet, their presence in your school
07:12:01 16 district, their enrollment would decrease?

07:12:10 17 A. You want me to give an explanation as to why?

07:12:13 18 Q. Yeah. I'm assuming that as superintendent of the school
07:12:16 19 district, you would have been concerned about this.

07:12:17 20 A. Yes, sir.

07:12:19 21 Q. Why do you believe that Hispanic students were choosing to
07:12:23 22 transfer out of Hearne in such substantial numbers?

07:12:28 23 A. I believe that I had two board members who had recruited and
07:12:32 24 encouraged them to go.

07:12:35 25 Q. Two board members who encouraged Hispanic students to go?

07:12:41 1 A. Uh-huh, and other students. In fact, they took theirs out.

07:12:47 2 Q. So they would somehow lead 182 kids out of Hearne to go to
07:12:52 3 different school districts?

07:12:55 4 A. You said what I believe. I think they would have some
07:12:56 5 bearing.

07:12:57 6 Q. So your own board members?

07:12:58 7 A. Yes, sir.

07:12:58 8 Q. What did they do? Did they go out door-to-door and ask
07:13:02 9 Hispanic parents to send their kids somewhere else?

07:13:05 10 A. They went door-to-door for some reasons.

07:13:09 11 THE COURT: Now, who was this that was going
07:13:10 12 door-to-door?

07:13:12 13 THE WITNESS: Board members.

07:13:13 14 THE COURT: Of what school district?

07:13:15 15 THE WITNESS: Hearne.

07:13:18 16 Q. (BY MR. FELDMAN) Well, were Hearne board members contacting
07:13:22 17 Hispanic parents to get them to transfer their students out?

07:13:28 18 A. I don't know. That's what I think. That's what you said,
07:13:30 19 do I think or do I --

07:13:31 20 Q. You have no evidence to indicate that's the case?

07:13:33 21 A. I know they went door-to-door. I saw them.

07:13:35 22 Q. Could it possibly be that these Hispanic -- the parents of
07:13:39 23 these Hispanic students, in great numbers, percentages, at least
07:13:44 24 33 percent, thought that they could get a better education for
07:13:49 25 their students at Mumford, as opposed to Hearne?

07:13:52 1 A. That's a possibility.

07:13:56 2 Q. Looking at the correspondence --

07:13:59 3 THE COURT: Well, let me interject. Did Mumford have a
07:14:04 4 bilingual education program, or do you know?

07:14:07 5 THE WITNESS: I don't know, sir.

07:14:09 6 THE COURT: Was there one at Hearne?

07:14:11 7 THE WITNESS: Yes, sir. A bilingual program -- not a
07:14:17 8 bilingual program, no, sir, we didn't.

07:14:20 9 MR. FELDMAN: ESL.

07:14:21 10 THE WITNESS: ESL.

07:14:23 11 THE COURT: English as a Second Language.

07:14:24 12 THE WITNESS: Yes, sir. We didn't have the number to
07:14:26 13 have that.

07:14:27 14 THE COURT: All right. Go ahead.

07:14:29 15 Q. (BY MR. FELDMAN) Directing your attention to an earlier
07:14:32 16 exhibit that you were referred to by the U.S. Attorney, do you
07:14:37 17 have the exhibit notebook with 35 in it?

07:14:40 18 A. 35, yes, sir. Well, I say yes, sir. Let's see here. With
07:15:02 19 235 or just 35?

07:15:02 20 Q. 35, sir.

07:15:02 21 A. I start at 191 in this one and I start at 234. No, sir. I
07:15:02 22 don't have it.

07:15:02 23 Q. All right. Here you go.

07:15:14 24 A. You want 35?

07:15:15 25 Q. Yes. In 1998, you sent a letter, which is Exhibit 35, to

07:15:46 1 Dr. Villarreal, I believe you testified, in follow-up to a phone
07:15:51 2 conversation. Do you have it now?
07:15:52 3 A. Yes, sir.
07:15:54 4 Q. It doesn't state in here, does it, that you believe that
07:15:57 5 these transfers are due to race, do you?
07:16:05 6 A. In the letter that I wrote to Dr. Villarreal?
07:16:08 7 Q. Right.
07:16:09 8 A. I don't remember if I said that or not. I don't have a copy
07:16:13 9 of.
07:16:13 10 Q. Well, it's No. 35.
07:16:16 11 A. No. 35?
07:16:17 12 Q. Yes, sir. Exhibit No. 35.
07:16:21 13 MR. CASPAR: Objection, your Honor. I'm sorry. I
07:16:22 14 think it's Exhibit 10.
07:16:26 15 MR. FELDMAN: Sorry. There was an old exhibit sticker
07:16:29 16 on the exhibit. It's No. 10.
07:16:31 17 THE COURT: Exhibit 10, you say?
07:16:33 18 MR. FELDMAN: Yes, sir. I apologize to the Court.
07:16:37 19 Q. (BY MR. FELDMAN) Looking at No. 10.
07:16:38 20 A. Yes, sir.
07:16:40 21 Q. That letter was sent to Dr. Villarreal in follow-up to a
07:16:43 22 phone conversation you had with him?
07:16:45 23 A. Conversations, yes, sir, we had.
07:16:47 24 Q. All right. That you had in 1998?
07:16:49 25 A. Yes, sir.

07:16:50 1 Q. You had already been superintendent for two years?

07:16:52 2 A. Yes, sir.

07:16:54 3 Q. Why did it -- why did you take so long to complain about the
07:16:57 4 transfers?

07:16:58 5 A. I thought that they would do something as a result of me
07:17:01 6 calling and talking to people, and so, I don't have any record of
07:17:04 7 all the calls that I made, so I just called and talked to people
07:17:07 8 and I thought they would just enforce what we were having to
07:17:12 9 comply with but --

07:17:15 10 Q. Didn't you say that you, you know, you felt that the impact
07:17:19 11 was significant, the impact -- didn't you say that the impact of
07:17:22 12 your fund -- on your funding was significant?

07:17:24 13 A. Yes, sir.

07:17:26 14 Q. So wouldn't this have been an issue?

07:17:29 15 A. Yes, sir.

07:17:30 16 Q. That you would have aggressively pursued?

07:17:32 17 A. I thought that's what I was doing by the telephone
07:17:34 18 conversations.

07:17:36 19 Q. Starting in 1998?

07:17:37 20 A. No, sir. Before then, as early as, possibly, 1996 because
07:17:44 21 this says "conversations" here.

07:17:47 22 Q. I thought you testified this morning it was 1998.

07:17:50 23 A. That's when I have right here, but I made a point to say
07:17:52 24 conversations that we'd had, and there were many that I had with
07:17:57 25 people at the agency in regards to the problem of transfers.

07:18:01 1 Q. And there's nothing in this letter to Dr. Villarreal that is
07:18:04 2 Exhibit 10 which speaks to the race of the students involved in
07:18:07 3 any concerns that you might have had with respect to the race of
07:18:10 4 those students, does it?

07:18:12 5 A. No, sir.

07:18:13 6 Q. And then, the next letter you send is fully three years
07:18:19 7 later?

07:18:20 8 A. Which one?

07:18:21 9 Q. Let me direct your attention to another exhibit, No. 38.

07:18:37 10 A. 38.

07:19:00 11 Q. Do you see that, sir?

07:19:01 12 A. Yes.

07:19:02 13 Q. I believe there's no objection to this exhibit, it's
07:19:05 14 admitted into evidence. As I understand.

07:19:07 15 Your letter is to Dr. Enos at the TEA, dated September
07:19:12 16 12, 2001. Please consider this an official request for an
07:19:17 17 investigation.

07:19:18 18 A. Yes, sir.

07:19:20 19 Q. Now, that is more than three years after your first letter,
07:19:25 20 which was Exhibit 10; is that correct?

07:19:28 21 A. Yes, sir.

07:19:29 22 Q. Why did you wait three years to send another letter asking
07:19:36 23 for something to be done about the transfer situation?

07:19:40 24 A. I thought they was going to be taken care of, and we
07:19:45 25 received some communication, I think, saying that they weren't

07:19:48 1 supposed to take transfers or something.

07:19:51 2 Q. You thought it was being taken care of, yet, you were --

07:19:54 3 A. The agency. That's where we were requesting. And I heard

07:19:58 4 nothing back from them, so I just took it for granted it was

07:20:01 5 taken care of.

07:20:01 6 Q. It wasn't taken care of, was it?

07:20:03 7 A. No, sir.

07:20:04 8 Q. And you were, by your testimony, losing funding every year?

07:20:06 9 A. Yes, sir.

07:20:07 10 Q. Well, what prompted you, specifically, to write this letter?

07:20:14 11 Did a board --

07:20:17 12 A. After we still kept trying to find out what could I do to

7:20:19 13 get the -- get this enforced, all of the while I talked to

07:20:25 14 people, but I wasn't smart enough to write down every time that I

07:20:29 15 talked to someone.

07:20:30 16 Q. Well, were you prompted to write this letter by somebody?

07:20:33 17 A. By the agency people.

07:20:34 18 Q. No. Were you prompted by somebody at Hearne to write this?

07:20:37 19 A. No. By agency people. After I kept talking and kept

07:20:40 20 talking, finally, someone said, well, you need to just lodge a

07:20:44 21 formal complaint.

07:20:45 22 Q. You kept talking and talking for three years?

07:20:47 23 A. Yes, sir. Maybe longer than that, to different ones.

07:20:52 24 Q. And you expected things to be corrected just because you

07:21:04 25 were talking for three years?

07:21:04 1 A. They would tell me that they were, and they told me that
07:21:04 2 they were wrong for what they were doing, so I took for granted
07:21:04 3 that it would be taken care of.

07:21:04 4 Q. You testified that you retired because of the fact that you
07:21:09 5 were focusing too much attention on this transfer issue and not
07:21:14 6 enough attention on the students?

07:21:16 7 A. Yes, sir.

07:21:18 8 Q. Well, when did you start focusing too much attention on the
07:21:21 9 transfer issue and not enough on the students?

07:21:25 10 A. It was a struggle the whole while I was there from 1996 to
07:21:29 11 2002.

07:21:31 12 Q. So this is something that was consuming a great deal of your
7:21:33 13 time?

07:21:34 14 A. Yes, sir.

07:21:35 15 Q. To the derogation of the performance of your students?

07:21:41 16 A. Yes, sir.

07:21:41 17 Q. And, yet, for three years there is nothing in writing from
07:21:46 18 you to anybody about this?

07:21:48 19 A. I was lead to believe --

07:21:50 20 MR. HEPWORTH: This has been asked and answered four
07:21:51 21 times.

07:21:52 22 THE COURT: What is your objection?

07:21:53 23 MR. HEPWORTH: That has been asked and answered
07:21:54 24 numerous times.

07:21:56 25 THE COURT: Yes, sir, it has.

07:21:58 1 MR. FELDMAN: Withdraw it, your Honor.

07:22:01 2 Q. (BY MR. FELDMAN) Turning next to Exhibit 44, which is a
07:22:21 3 letter, dated April 18th, 2002, from you to Felipe Alanis, the
07:22:33 4 commissioner of education at that time?

07:22:33 5 A. Yes, sir.

07:22:36 6 Q. Did anybody prompt you to write this letter?

07:22:43 7 A. Yes, sir. I'm thinking is this -- this is the last one.
07:22:47 8 Someone from the agency called me and told me that we're ready to
07:22:52 9 take action on this. We're going to get them, so just if you go
07:22:55 10 ahead and write me another letter, I will take action on it.

07:22:59 11 Q. But what about in Hearne? Is anybody prompting you in
07:23:02 12 Hearne?

7:23:03 13 A. Oh, no, sir. What this was was purely the agency calling me
07:23:07 14 and told me that you really need to go ahead and write another
07:23:13 15 letter, so I did. I said, well, I have everything in the file.
07:23:15 16 I'll give you a copy of the whole file.

07:23:17 17 Q. Well, why is it in the last paragraph you state, "Thank you
07:23:21 18 for your cooperation concerning this matter. Mr. David Deaver,
07:23:24 19 who has been employed as the new superintendent, asked that a
07:23:29 20 copy of this request be forwarded to the persons listed below"?
07:23:33 21 Why would you have put that in the letter when you were
07:23:35 22 superintendent yourself?

07:23:36 23 A. Yes, sir. Uh-huh.

07:23:39 24 Q. Why would you put that paragraph in that David Deaver asked
07:23:43 25 you to send copies to these people?

07:23:45 1 A. After we talked and -- but I had the call from the agency
07:23:49 2 already to send all of this in and I shared that with him, and
07:23:54 3 then, he just told me, if you would, just send a copy to this
07:24:00 4 person, also.

07:24:01 5 Q. Well, why couldn't you accept responsibility for that
07:24:03 6 yourself and just have copied them without saying David Deaver
07:24:07 7 asked me to do this?

07:24:11 8 A. I guess I could have.

07:24:14 9 Q. Now, when did you actually announce your retirement?

07:24:22 10 A. Oh, my goodness, sir, it was before -- oh, I'd have to go
07:24:33 11 back and look at that. And I'm not sure of the date now. But it
07:24:37 12 was -- I retired in 2002.

07:24:39 13 Q. I understand you did. I was just curious as to how early in
07:24:42 14 the school year you made that announcement.

07:24:45 15 A. Any time they would -- my thinking is they would have time
07:24:47 16 to get someone else. So it was pretty early that I announced it.

07:24:51 17 Q. I'd like to show you one more exhibit that is along the same
07:24:53 18 lines, and it is No. 54.

07:24:59 19 A. Uh-huh.

07:25:03 20 Q. A letter from yourself to Dr. Enos, dated 6-19-02. You say
07:25:17 21 "The purpose of this letter." Do you have it, sir?

07:25:21 22 A. Yes, sir.

07:25:21 23 Q. "The purpose of this letter is to present additional
07:25:22 24 documentation in regards to my letter of complaint, dated April
07:25:26 25 18th, 2002." You state that I was -- quote, I was told by Dr.

07:25:32 1 Villarreal that if students claimed safety as the reason for
07:25:34 2 leaving our district, the receiving school superintendent was
07:25:37 3 supposed to ask the superintendent of the district that the
07:25:41 4 students left if the claim was true. If the claim was not true,
07:25:47 5 then students should not be allowed to enroll using the safety
07:25:50 6 code, close quote.

07:25:54 7 When were you told that by Dr. Villarreal?

07:26:00 8 A. You said closed quote?

07:26:03 9 Q. Well, I ended the quote.

07:26:04 10 A. Okay. It was prior to me writing this. And I talked to Dr.
07:26:12 11 Villarreal way back in the -- when I first started this, when the
07:26:17 12 other letter back in 1998, and then, as we got to the safety, he
7:26:20 13 was the one who worked with me and he was the one who told me
07:26:35 14 this.

07:26:35 15 Q. Well, you're asserting this in 2002, you find it necessary
07:26:35 16 to have your statement notarized. Why are you submitting this to
07:26:38 17 the TEA at that time?

07:26:46 18 A. Because I would imagine they were still accepting these
07:26:48 19 students under -- with using this code and no one had ever called
07:26:53 20 us.

07:26:53 21 Q. Why, specifically, did you believe it was necessary for you
07:26:58 22 in June of 2002 to make a statement to the TEA relative to a
07:27:04 23 conversation that you had with Dr. Villarreal sometime in the
07:27:08 24 past and to have it notarized?

07:27:11 25 A. I'm not remembering now what --

07:27:13 1 THE COURT: Well, it states in the letter, "I was told
07:27:17 2 by Dr. Villarreal that if students claimed safety as the reason
07:27:22 3 for leaving our district, the receiving superintendent was
07:27:26 4 supposed to ask the superintendent of the district that the
07:27:30 5 students left if the claim was true. If the claim was not true,
07:27:34 6 then students should not be allowed to enroll using the safety
07:27:38 7 code."

07:27:40 8 Did anyone suggest to you that you should state this
07:27:43 9 under oath?

07:27:44 10 THE WITNESS: I think it was Dr. Villarreal.

07:27:46 11 THE COURT: All right.

07:27:50 12 Q. (BY MR. FELDMAN) I'd like to also show you, sir, certain
07:27:54 13 documents relative to the desegregation order that Hearne is
07:28:03 14 operating under.

07:28:03 15 A. Yes, sir.

07:28:04 16 Q. You understand, do you not, that Hearne is operating under a
07:28:08 17 desegregation order?

07:28:09 18 A. Yes, sir.

07:28:11 19 Q. Did you understand that while you were the superintendent of
07:28:13 20 the school district?

07:28:16 21 A. Yes. I think we had to prepare reports.

07:28:18 22 Q. Did you prepare reports that -- submitted to the Court,
07:28:26 23 Judge Nowlin in the Western District?

07:28:30 24 THE COURT: Are you referring to the order that was
07:28:32 25 entered by Judge Roberts, here in Austin, relating to your school

07:28:36 1 district?

07:28:37 2 THE WITNESS: No, sir. I misunderstood what he was
07:28:39 3 saying here, again, because we had to -- I'm trying to remember
07:28:44 4 now what it was that we had to do. But there was something that
07:28:48 5 we have to send to the -- Washington.

07:28:54 6 Q. (BY MR. FELDMAN) The Justice Department?

07:28:55 7 A. Yes, sir.

07:28:56 8 Q. While you were superintendent?

07:28:57 9 A. Yes, sir. I'd have to go back now and refresh my mind.

07:29:02 10 Q. Did you have to send reports to the Justice Department about
07:29:05 11 what you were doing to comply with the desegregation order?

07:29:09 12 THE COURT: Again, he's referring to Judge Roberts'
7:29:12 13 order.

07:29:14 14 THE WITNESS: No, sir. I'm not remembering what that
07:29:15 15 was, sir, but I know that we had to -- I had staff who helped me
07:29:21 16 do this. And the attorneys, also, helped me do this.

07:29:26 17 Q. (BY MR. FELDMAN) Did you understand while you were
07:29:29 18 superintendent that, separate and apart from order 5281 that was
07:29:34 19 entered by this court, that your school district was under a
07:29:39 20 separate desegregation order, entered by Judge Roberts in 1970?

07:29:46 21 A. I think the superintendent before me had told me about it.

07:29:48 22 Q. Did you do anything as superintendent from 1996 to 2001 to
07:29:55 23 make any form of report to Judge Nowlin, or any other federal
07:30:00 24 judge, regarding compliance with that other desegregation order?

07:30:08 25 A. If I did, I'm not -- I don't remember, sir.

07:30:18 1 Q. Do you understand that Hearne is still under that
07:30:19 2 desegregation order?

07:30:20 3 A. Yes, sir. I was listening to you, this morning, talk about
07:30:23 4 that.

07:30:26 5 Q. If you knew that Hearne was under a desegregation order and
07:30:29 6 you believed that the transfers at issue here were impeding
07:30:35 7 desegregation, didn't you have a duty to report that to Judge
07:30:43 8 Nowlin in the Western District, since you were under a
07:30:47 9 desegregation order there?

07:30:48 10 A. I thought just the transfer reports would take care of all
07:30:52 11 of that.

07:30:53 12 Q. Transfer reports to whom?

7:30:55 13 A. Texas Education Agency.

07:31:00 14 Q. You understand that Hearne I.S.D. reached unitary status a
07:31:05 15 long time ago. Is that a "Yes"?

07:31:09 16 A. Yes, sir.

07:31:10 17 MR. CASPAR: Objection, your Honor.

07:31:12 18 MR. HEPWORTH: Calls for a legal conclusion and it's
07:31:13 19 inaccurate.

07:31:14 20 THE COURT: I take it it's a legal conclusion. You're
07:31:17 21 asking a lay witness a legal conclusion. But go ahead.

07:31:21 22 MR. FELDMAN: Well, your Honor, let me do this through
07:31:24 23 some exhibits, then, because the representation's already been
07:31:26 24 made for the record, and I want to make the Court aware of it.

07:31:30 25 Q. (BY MR. FELDMAN) I'd direct your attention, sir, to -- make